

# **PENSION PLANS REGARDING US AIRWAYS**

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## **HEARING** BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS UNITED STATES SENATE ONE HUNDRED EIGHTH CONGRESS FIRST SESSION

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**SPECIAL HEARING**  
JANUARY 14, 2003—WASHINGTON, DC

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## CONTENTS

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	Page
Opening statement of Senator Tom Harkin .....	1
Opening statement of Senator Arlen Specter .....	1
Statement of Steven A. Kandarian, Executive Director, Pension Benefit Guaranty Corporation, Department of Labor .....	4
Prepared statement .....	6
Opening statement of Senator Rick Santorum .....	17
Prepared statement .....	17
Statement of Hon. James C. Roddey, chief executive, Allegheny County, PA ...	30
Prepared statement .....	32
Statement of David N. Siegel, president and CEO, US AIRWAYS .....	33
Prepared statement .....	36
Statement of Captain Duane E. Woerth, president, Air Line Pilots Association .....	37
Prepared statement .....	40
Statement of Captain Bill Pollock, chairman, US Airways Master Executive Council, Air Line Pilots Association .....	42



## PENSION PLANS REGARDING US AIRWAYS

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TUESDAY, JANUARY 14, 2003

U.S. SENATE,  
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN  
SERVICES, AND EDUCATION, AND RELATED AGENCIES,  
COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 3:13 p.m., in room SD-124, Dirksen Senate Office Building, Hon. Tom Harkin (chairman) presiding.  
Present: Senators Harkin and Specter.  
Also present: Senator Santorum.

### OPENING STATEMENT OF SENATOR TOM HARKIN

Senator HARKIN. The subcommittee of the Appropriations Committee, will come to order, on Labor, Health and Human Services appropriations.

This hearing was called at the request of Senator Specter. But because of the rules of the Senate and the way we are sort of operating right now, it falls to me to have to call the committee to order, and I will soon turn the gavel over to Senator Specter.

But that is in keeping with the way that this subcommittee has operated now for—I think it has been 13 years. I was chairman, and Senator Specter was ranking member; then he was chairman, and I was ranking member; then I was chairman again, and he was ranking member; and now he is going to be chairman, and I will be ranking member again. So we just do this back and forth. But during all that time, this subcommittee has operated on a strictly bipartisan basis—many times when I was Chair that Senator Specter had his own hearings, and vice versa—and I think that is the way that these committees ought to be run.

This is a vitally important hearing dealing with pensions and the Pension Benefit Guaranty Corporation. I compliment Senator Specter for bringing this hearing together, and I look forward to the testimony. I, myself, cannot stay for the whole thing, but, again, I just again want to compliment Senator Specter. I look forward to working with you, Senator Specter, in this Congress, and hopefully we will get all this thing worked out so we will not have to engage in this kind of a little kind of a maneuver any time in the future.

And with that, I would turn the gavel over to Senator Specter.

### OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Thank you very much, Senator Harkin—Mr. Chairman, I think.

What you have just seen, ladies and gentlemen, and those who may be watching on C-SPAN, has a number of levels of complexity. Republicans took control of the Senate on a 51-to-49 majority after the last election, but there has not been a resolution on reorganization.

When the issues arose with US Airways and the pilots' pensions, it seemed to me—and I conferred with Senator Harkin, and he agreed—that this was an appropriate matter for a hearing by this subcommittee, which has jurisdiction over the Department of Labor. And we have proceeded as if I was the chairman, or would be the chairman by Tuesday, but the majority leader, Senator Frist, and the Democratic leader, Senator Daschle, have not been able to agree on reorganization, and there is, therefore, an issue as to whether any Republican can preside at a hearing.

So Senator Harkin and I have conferred for the last 2 days, and we have decided that, in accordance with our longstanding practice, that we would work on a bipartisan basis. Tom Harkin and I are two of the advocates who have learned a long time ago that if you want to get anything done in Washington, you have to be willing to cross party lines. And as we have traded the chairmanship and ranking-member status, as the gavel has passed back and forth, it has been seamless, and that is in the interest of the health system, which our subcommittee funds, and education, which our subcommittee funds, and labor, which our subcommittee funds, to the tune of about \$130 billion a year, which is obviously very, very substantial.

Now, on to the issues at hand. It is well known in the public domain about the problems of the airlines in America and the difficulties which US Airways has had. And there has been an herculean effort made by the company and the employees to keep the airline going. It is a very vital matter for the United States, for national and international travel, that the sixth largest airliner continues to operate.

And a new chief executive officer, David Siegel, has taken over. He has come forward with a bold plan. He is met with great cooperation by the labor unions, making enormous concessions, and suppliers, all in line to get a Federal guarantee, which the Congress has legislated. But to get the guarantee, there have to be certain changes made. And for a time, it appeared that the issue of pilots' pension benefits might be a stumbling block for the financing to go forward from the Alabama lender. But that obstacle has been overcome, and US Airways is moving ahead to continue in its operation. But left in its wake is an issue about the pilots' pension benefits.

Last Thursday, Senator Santorum and I introduced legislation to try to clarify the situation. Earlier today, I met with the airline pilots in Pittsburgh to go over the issues. This is a matter of great concern to the entire Nation because US Airways serves the entire country in addition to international routes, but it is especially important to Pennsylvania, which has 17,000 employees, major hubs in Pittsburgh and Philadelphia, and 11,000 employees in Pittsburgh. And what we are looking at here is a very severe potential disadvantage on the pilots pensions, which could be reduced by as much as 75 percent. And you have 4,300 active pilots and 2,000

more retired pilots, and those pilots have already made concessions of \$650 million a year.

So what we are searching for is a way to see to it that fairness is done. And what the company and the pilots have agreed to is a program to terminate the existing pension plan, and then to reinstate the pension plan, but with a different contribution schedule, which would enable US Airways to make the contributions without defaulting on its other obligation, or without jeopardizing the Alabama loan or the other plans in the US Airways reorganization.

Now, what the matter really turns on, and it is yet my hope and the hope of Senator Santorum and others who have studied this issue, is that we will find a way within the existing legislation to solve the problem or, if not, to proceed with a legislative correction.

I have examined the legal memorandum submitted by PBGC General Counsel, James J. Keightley, who is with us today, to PBGC Executive Director Steven A. Kandarian, and it is my legal judgment—lawyers have been known to differ on just about everything under the sun; it's not too hard to get a second opinion, a different opinion; it's not too hard to get a third opinion, also a different opinion or successive opinions—but what we are really trying to do is take a look at the underlying statute in the public policy. And in looking at the legal memorandum submitted by Mr. Keightley, on page 5, he notes: "In sum, while PBGC has broad discretion to determine whether restoring a plan would be appropriate and consistent with its duties under Title IV of ERISA, we believe that a purposeful effort to achieve an objective not permitted by the Agency's governing statute—granting funding relief—would be overturned as exceeding our statutory authority."

But as I read the statute, this is an objective permitted by the statute. The opinion of Mr. Keightley says, on page 1, a situation where a plan "is to be terminated," or "is in the process of being terminated," . . . . In such a case, PBGC is authorized to "cease" termination activities and restore the plan to its prior status if PBGC determines that the plan should not be terminated "as a result of such circumstances as [PBGC] determines to be relevant."

Well, it seems to me that the language in Mr. Keightley's opinion gives latitude to accomplish what we seek here. On page 2, Mr. Keightley's opinion says: "The second sentence of section 4047 addresses the situation where a plan 'has been terminated' under section 4041 or 4042 of ERISA. It empowers PBGC, 'in any such case in which [PBGC] determines such action to be appropriate and consistent with its duties under [Title IV], to take such as may be necessary to restore the plan to its pre-termination status,' . . . ."

Well, it seems to me that when you talk about a standard of "appropriate and consistent," and where you have a plan which is agreed to by the company and the pilots, and if the plan is not adopted, the pilots lose 75 percent of their pensions, and the Pension Benefit Guaranty Corporation—taxpayers have to pick up the tab and pay the pension benefits—that it is a win-win-win situation, win for the company, win for the pilots, and win for the Government and the taxpayers to have that approved. And the essential issue is whether there is sufficient flexibility under existing legislation, which we are going to examine. But while it is hyper-

technical to read statutes, this matter turns on statutory construction, and it is necessary to lay that kind of a foundation.

**STATEMENT OF STEVEN A. KANDARIAN, EXECUTIVE DIRECTOR, PENSION BENEFIT GUARANTY CORPORATION, DEPARTMENT OF LABOR**

**ACCOMPANIED BY JAMES J. KEIGHTLEY, GENERAL COUNSEL**

Senator SPECTER. At this point, let us turn to our witnesses. Mr. Steven Kandarian is Executive Director of the Pension Benefit Guaranty Corporation, and prior to joining the corporation, he was founder and managing director of Orion Partners, an asset management group, and was also an investment banker. Earlier in his career, he served as an economist with the U.S. Civil Aeronautics Board, and he holds a bachelor's degree in economics from Clark University, a J.D. from Georgetown University Law Center, and an M.B.A. from Harvard Business School.

Mr. Kandarian, we thank you for arranging your schedule to join us, and we look forward to your testimony.

The time limits established by the committee, as a general rule, are 5 minutes. We appreciate it if you would adhere to that to the maximum extent possible so we have time left for question-and-answer.

Since the last committee hearing, I attended a memorial service for Ambassador Annenberg, Walter Annenberg, and the time limit was set at 3 minutes. And former President Ford was held to 3 minutes, and Secretary of State Colin Powell was held to 3 minutes, and it was sort of an inconsequential factor that I was held to 3 minutes. So I want you to know what a generous time allocation there is in 5 minutes.

Mr. KANDARIAN. Thank you.

Senator SPECTER. Mr. Kandarian.

Mr. KANDARIAN. Mr. Chairman and members of the subcommittee, I am Steve Kandarian, Executive Director, Pension Benefit Guaranty Corporation. With me today is PBGC's General Counsel, Jim Keightley. We want to thank you, Mr. Chairman, for the opportunity to testify in this very important matter.

You have asked me to address our legal opinion that we could not terminate and immediately restore US Airways' pension plans in order to provide the company with a longer period over which to fund its pensions and whether the law should be changed.

By way of background, PBGC receives no taxpayer dollars. Rather, it is funded by the premiums paid by companies as sponsors of defined benefit plans. It is important to note this is a voluntary pension system. No employer is required to establish or maintain a pension plan.

PBGC was in a deficit position for the first 21 years of its existence. To address the causes of these deficits, Congress amended the pension laws in 1986, 1987, and 1994 to increase premiums and strengthen funding rules. Companies with significantly underfunded plans were required to fund pension liabilities over 5 to 7 years, rather than over 30 to 40 years. In 1987, Congress also limited the use of funding waivers, which it felt had been abused. The key restriction was to require employers to pay any amount waived in 5 years, rather than 15. These safeguards were enacted because



Congress recognized that faster funding and limited waivers protect both participants and the pension insurance system.

US Airways is currently undergoing reorganization in bankruptcy and has applied for a loan guarantee from the ATSB. US Airways believes it cannot satisfy the board's conditions for a loan guarantee while also making its required pension contributions. It believes this is true even if it obtains the funding waivers available under existing law. Thus, it came up with a proposal for a super funding waiver. US Airways asked PBGC to terminate the plans and then use its authority under section 4047 of ERISA to immediately undo the terminations, restore the plans, and provide 30 years to fund them.

However, the 1974 conference report on ERISA made clear that the purpose of section 4047 was to allow PBGC to restore a plan: "if the employer and plan enjoyed a favorable reversal of business trends or if some other factor made termination no longer advisable."

The prepackaged termination restoration proposal by US Airways is inconsistent with this congressional intent. There is nothing in section 4047 or anywhere else in Title IV of ERISA that gives PBGC the power to grant funding relief in order to assist an ailing company. In fact, IRS—

Senator SPECTER. Is there anything which precludes the corporation from granting funding relief?

Mr. KANDARIAN. There is no specific language that precludes.

Senator SPECTER. So the statute is neutral on that key point.

Mr. KANDARIAN. We do not think so.

Senator SPECTER. Well, there is no statutory language which precludes funding relief, as you have just testified.

Mr. KANDARIAN. Right. But, in fact, the IRS, not PBGC, has statutory authority for plan funding; and the IRS, not PBGC, has authority to waive funding requirements for corporations in temporary financial difficulty. US Airways also cites as precedent PBGC's termination and restoration of three LTV Steel plans with a modified funding schedule.

Mr. Chairman, the LTV situation was very different. PBGC used section 4047 to restore the plans after it found that LTV's follow-on benefit arrangements were abusive to the insurance system. After 3 years of litigation, the Supreme Court upheld our restoration decision. By the time LTV emerged from bankruptcy and began funding its plans based upon the modified funding schedule, more than 6 years had elapsed. The LTV case provides no precedent for a prepackage termination restoration as proposed by US Airways.

Mr. Chairman, you also asked me to address the question of whether the Agency should have expanded authority under section 4047 to terminate and then restore the plans with a new, substantially lengthened funding schedule. PBGC does not desire such expanded authority. We believe that terminating and restoring plans of companies in financial distress would undercut the funding requirements enacted by Congress and jeopardize the solvency of the insurance system. Moreover, it would be a dangerous precedent. We are sympathetic to workers who would suffer significant cutbacks if their plans are terminated, but providing this special relief

to US Airways would give it a competitive advantage over other airlines. It would also give other financially distressed companies a blueprint for how to borrow from their pension plans at the expense of the pension insurance system and the 44 million Americans it protects.

If US Airways——

Senator SPECTER. Has there been any evidence that US Airways has undertaken a borrowing program to create this current problem?

Mr. KANDARIAN. What do you mean by borrowing program?

Senator SPECTER. Well, that is language you just used, that they might set a precedent to give other airlines ideas about how to institute a borrowing program from their pension plans. Has US Airways borrowed from the pension plan here?

Mr. KANDARIAN. If they go forward with a restoration proposal, that could well happen.

Senator SPECTER. That could well happen but has not happened.

Mr. KANDARIAN. Well, it will not happen until there is restoration funding.

Senator SPECTER. But the question is, has US Airways used its pension plan to borrow money? You say that you are concerned about a precedent here which would give airlines a way to borrow from the pension plan——

Mr. KANDARIAN. The way I was using——

Senator SPECTER [continuing]. So I asked you, has US Airways borrowed from the pension plan?

Mr. KANDARIAN [continuing]. The way I was using that terminology was that, going forward, if they did not put the funding in, under current law, they would in effect be taking monies that otherwise they would be contributing under law, under ERISA, to the plan and keeping that for other business purposes.

Senator SPECTER. Well, that is hardly borrowing, Mr. Kandarian. Go ahead.

Mr. KANDARIAN. If US Airways, why not other financially troubled airlines? If airlines, why not companies in other industries?

#### PREPARED STATEMENT

In closing, I would like to repeat a point that the Senate Finance Committee made in 1987, when it limited funding waivers: "The integrity of the plan termination insurance program will be jeopardized if employers have the opportunity to avoid liability for their pension promises at the expense of other employers who moderated their promises or are more financially secure and remain in the defined benefit system, . . .". That was a sound observation then, and is a sound observation today.

Mr. Chairman, I thank you again for this opportunity to appear before the subcommittee. I will be happy to answer questions.

[The statement follows:]

#### PREPARED STATEMENT OF STEVEN A. KANDARIAN

Mr. Chairman and Members of the Subcommittee: Good afternoon. I am Steven A. Kandarian, Executive Director of the Pension Benefit Guaranty Corporation (PBGC). With me today is PBGC's General Counsel, James Keightley. We want to thank you, Mr. Chairman, for holding this hearing and for the opportunity to testify on this very important matter.

You have asked me to address the PBGC General Counsel's legal opinion that PBGC may not terminate and immediately restore US Airways' pension plans in order to provide the company with a longer period over which to fund its plans. You have also asked me to address whether the law should be changed.

Before turning to those issues, I would like to provide some background on the role PBGC plays in ensuring a secure retirement for American workers, and on the relevant pension funding rules.

#### STRUCTURE OF PBGC

PBGC was created as a federal corporation by the Employee Retirement Income Security Act of 1974 (ERISA). PBGC protects the pensions of about 44 million workers and retirees in about 35,000 private defined benefit pension plans. PBGC has a three-person Board of Directors—the Secretaries of Commerce and the Treasury and the Secretary of Labor, who is the chair.

It is important to note that PBGC receives no taxpayer dollars. PBGC is funded by premiums paid by sponsors of defined benefit plans. Every company that sponsors a defined benefit plan pays to PBGC an annual flat-rate premium of \$19 per participant. In addition, sponsors of certain underfunded plans, which pose a greater risk to the insurance system, pay an additional variable-rate premium based on the degree of their underfunding.

#### PAST CONGRESSIONAL ACTION TO TIGHTEN FUNDING RULES

PBGC was in a deficit position for its first 21 years of existence. To address the causes of the deficit, Congress amended PBGC's governing law in 1986, 1987, and 1994 to increase premiums, to tie premiums more to exposure, to prevent ongoing companies from "dumping" their underfunded plans on PBGC, and to tighten the funding requirements for underfunded plans. Two key elements of the tighter funding requirements were:

- Accelerated funding for plans that were generally less than 90 percent funded, and
- Stricter limits on the granting of waivers from the funding requirements.

##### *Accelerated funding requirements*

When ERISA was enacted in 1974, Congress allowed employers with existing pension plans 40 years to pay unfunded past service liabilities, and new plans were allowed 30 years to pay these liabilities. At that time, Congress viewed the funding rules and PBGC insurance as closely linked. As the Finance Committee stated:

"The termination insurance program is intended to work hand-in-hand with the minimum funding standards imposed by the bill, since the latter will limit the losses due to plan termination by requiring more adequate funding of pension plans."—Report of the Committee on Finance on S. 1170, S. Rep. No. 93-383 at 26 (1973).

Since 1974, Congress has acted repeatedly to tighten the funding rules to require faster funding and greater protections for participants and the pension insurance system. In 1987, Congress added accelerated funding rules for certain underfunded plans. These rules require employers to fund pension liabilities over 5 to 7 years rather than over 30 to 40 years.

When Congress strengthened the funding requirements in 1987, the Finance Committee concluded:

"An employer should not have the opportunity to make pension promises that exceed its financial capacity to meet its promises. In order to reduce the financial risk to plan participants and the PBGC, the amendment requires certain plans to be funded more rapidly depending on the funded status of the plan."—Omnibus Budget Reconciliation Act of 1987, 100th Cong., 1st Sess., "Explanation of Provisions Approved by the Committee on December 3, 1987 for inclusion in leadership Deficit Reduction Amendment," p. 170.

##### *Funding waivers*

In addition to strengthening the funding requirements, Congress also placed stricter limits on the IRS's granting of waivers from the funding requirements. A funding waiver allows a company to defer payment of funding contributions in the event of temporary business hardship. When ERISA was enacted, the IRS was granted authority to give a funding waiver to an employer suffering from "substantial business hardship."

In 1985 and again in 1987, Congress acted to tighten the requirements for funding waivers because of concern that funding waivers were being misused. As a re-

sult, Congress limited waivers to no more than 3 waivers in a 15-year period, reduced the 15-year waiver repayment period to a 5-year period, and required the IRS to consult with PBGC over proper security for any waiver over \$1 million.

The Senate Finance Committee explained that these tighter waiver rules were necessary and appropriate because:

“It is believed that employers have used funding waivers in the past to minimize plan contributions during the period immediately preceding the termination of a plan. The GAO report found that 30 percent of the claims against the PBGC arising during the period 1983–1985 resulted from the failure of employers to make required plan contributions prior to plan termination. The GAO concluded that significant percentages of the large claims represented required contributions that were overdue or had been waived by the IRS.

“Under present law, funding waivers are equivalent to an extension of credit from a plan to the employer that normally would be treated as a prohibited transaction. It is believed that such an extension of credit is not appropriate unless adequate safeguards apply to protect participants’ benefits. Plan participants should not be required to finance the continuing operations of an employer by placing their retirement benefits at risk.

*“Further it is believed that the integrity of the plan termination insurance program will be jeopardized if employers have the opportunity to avoid liability for their pension promises at the expense of other employers who moderated their promises or are more financially secure and remain in the defined benefit system.”* [Emphasis added.]—Omnibus Budget Reconciliation Act of 1987, 100th Cong., 1st Sess., “Explanation of Provisions Approved by the Committee on December 3, 1987 for inclusion in leadership Deficit Reduction Amendment,” p. 181.

#### US AIRWAYS’ REQUEST

US Airways is currently undergoing reorganization in bankruptcy court. It has applied for a loan guarantee from the Air Transportation Stabilization Board. To obtain a loan guarantee, US Airways must present a business plan that demonstrates that it can repay the loan based upon reasonable financial assumptions.

US Airways has asserted that it cannot satisfy the Board’s conditions and also make required pension contributions. US Airways also has asserted that the existing funding waiver process would not provide sufficient financial relief. Consequently, US Airways came up with a creative solution: the functional equivalent of a “super waiver.” US Airways asked PBGC to terminate the company’s pension plans, immediately restore those plans, and provide 30 years to fund them. US Airways asserts that PBGC has the authority to do this under section 4047 of ERISA.

Section 4047 authorizes PBGC to restore a plan to its “pretermination status” whenever PBGC determines that restoration of the plan is “appropriate and consistent with its duties” under Title IV of ERISA. The PBGC’s General Counsel concluded that this authority is not broad enough to justify restoration solely for the purpose of giving an employer a liberalized funding schedule.

The 1974 Conference Report on ERISA made clear that the purpose of section 4047 was to allow PBGC to restore a plan “if the employer and plan enjoyed a favorable reversal of business trends, or if some other factor made termination no longer advisable.” This concept is inconsistent with the “pre-packaged” termination/restoration proposal by US Airways.

There is nothing in the statute, the legislative history, or the regulations that would give PBGC the power to terminate a plan and then immediately restore the plan with easier funding rules in order to assist an ailing corporation. In fact, IRS, not PBGC, has statutory authority for plan funding under ERISA, including waiving funding requirements for corporations in temporary financial difficulty.

US Airways also cites as precedent PBGC’s restoration of three LTV steel plans with a modified funding schedule. Mr. Chairman, the LTV situation was very different.

PBGC terminated the LTV plans in January 1987. Immediately after PBGC terminated the plans, however, LTV set up follow-on benefit arrangements. In other words, an ongoing corporation dumped its pension liabilities on the insurance system and then attempted to provide its workers with substantially the same benefits (in combination with PBGC’s guaranteed benefits) as if the plans had never terminated.

Almost a year later, PBGC used section 4047 to restore the plans to LTV because it found that the follow-on benefit arrangements were abusive to the pension insurance system. After three years of litigation, the Supreme Court upheld PBGC’s restoration decision.

In October 1990, the IRS issued special funding regulations to address the problems of the LTV restoration, where the plans had been terminated for some time before being restored. The IRS provided these special funding rules because it concluded that, "[u]nderfunding will be significantly increased if the plan has been administered as a terminated plan for an extended period of time." In no way do the regulations suggest that the usual funding rules should be disregarded, that the IRS's authority over plan funding should be transferred to PBGC, or that PBGC should terminate plans solely for the purpose of then restoring them with eased funding requirements.

#### EXPANDED AUTHORITY

Mr. Chairman, you also asked me to address the question of whether the PBGC should have expanded authority under section 4047 to terminate and then restore plans with a new, substantially lengthened funding schedule. The PBGC does not desire such expanded authority because it would put at risk the retirement security of 44 million Americans whose pensions are insured by PBGC. PBGC believes that terminating and restoring plans of corporations in financial distress would set a dangerous precedent for the pension insurance system. Moreover, the termination/restoration process proposed by US Airways would be inconsistent with Congress' enactment of strengthened funding schedules.

The US Airways proposal would in effect make the PBGC and the other workers and plan sponsors in the defined benefit system lenders to an ailing company. Providing this special relief to US Airways would give other financially distressed companies a blueprint for how to "borrow" from their pension plans at the expense of the pension insurance system. If US Airways, why not other financially troubled airlines? If airlines, why not companies in other industries?

In closing, I would like to repeat the point that the Senate Finance Committee made in 1987 when it limited waivers of the funding rules.

"The integrity of the plan termination insurance program will be jeopardized if employers have the opportunity to avoid liability for their pension promises at the expense of other employers who moderated their promises or are more financially secure and remain in the defined benefit system."

That was a sound observation then, and it is a sound observation today.

Mr. Chairman, I thank you again for the opportunity to appear before the subcommittee today. I will be happy to answer your questions.

Senator SPECTER. Well, Mr. Kandarian, when you talk about other airlines relying upon this as a precedent, or other companies relying on this as a precedent, where you have a situation where a pension plan is designed for the benefit of the pilots and the plan is modified to defer contributions, the pilots are at risk, but the pilots have agreed to the proposal. They are the real party in interest, where they may be disadvantaged if the contributions are not made, and they have agreed to it. So why should the real party in interest not have a dominant voice in determining what will be done here? If they are willing to take the risk, why should the bureaucrats stand in their way?

Mr. KANDARIAN. There are other stakeholders who have a risk here, Senator.

Senator SPECTER. Who?

Mr. KANDARIAN. The other 44 million Americans who rely upon our system, our insurance system, and the integrity of that system and the solvency of that system. So—

Senator SPECTER. The other—who else who relies upon the integrity of the system—

Mr. KANDARIAN. Yes.

Senator SPECTER [continuing]. Has an interest here?

Mr. KANDARIAN. Yes.

Senator SPECTER. Who?

Mr. KANDARIAN. The 44 million Americans who have defined benefit plans or who rely upon them.

Senator SPECTER. Well, those 44 million Americans may find themselves in the same situation. They may be working for an employer which has been struck very hard by the terrorist attacks of September 11. Now, I do not know to what extent the pension benefits of US Airways have been affected by the deteriorating stock market, but the values have gone down everywhere. So that if you have some of those 44 million Americans who are beneficiaries of a pension plan, and they are looking at a consequence where they may have their pension benefits cut 25 percent unless there can be some flexibility by the Pension Benefit Guaranty Corporation, why should they not have the advantage of that flexibility? What principle is involved here which would be harmful to those 44 million Americans?

Mr. KANDARIAN. The pension promises made by US Airways to the pilots among other union groups were underfunded dramatically. In the case of the pilots plan, it was less than 40 percent funded.

Now, you keep mentioning a 75 percent cut in pensions for pilots. I do not know about specific pilots, but the plan is funded better than that. So the cut would be closer to 50 percent overall for the pilots plan if it were to be terminated based upon the most current available information that we have.

Senator SPECTER. When you say it is 40 percent underfunded—

Mr. KANDARIAN. No, it is 60 percent underfunded.

Senator SPECTER [continuing]. Sixty percent underfunded, that is not news to the PBGC, is it? If you find a pension plan is underfunded, are you authorized to take some action to see that that is corrected?

Mr. KANDARIAN. The funding rules control, which is really IRS. We do not get involved in telling people what level of funding, within the existing rules, to make. So US Airways could have better funded these plans themselves. They had that flexibility at different points in the past.

I would just return to one of the things you said. You seem to believe that this is merely between the company and the pilots themselves. In the 1980s, Eastern Airlines and Pan American came in for a number of waivers to the IRS. Those waivers were granted. Numerous waivers. In fact, the waiver rules were changed probably because of that. When the plans finally hit the PBGC, the whole—the underfunding grew dramatically from the time those waivers were initially granted to the time the plans were terminated by the Agency. So in a sense, all those accruals, all those things that happened over those years, the larger underfunding got transferred to the system.

Again, the system does not have the full faith and credit of the U.S. Government. The system does not have taxpayer dollars. The system has premiums paid by other private-sector companies who pick up that difference.

Senator SPECTER. Is your salary paid by the Federal Government?

Mr. KANDARIAN. It is.

Senator SPECTER. Are all the administrative costs of PBGC paid by the Federal Government?

Mr. KANDARIAN. Yes.

Senator SPECTER. Has there been no situation ever where there was a suggestion for some help from Congress for, in effect, a bailout where the PBGC had insufficient funds to take care of its obligations?

Mr. KANDARIAN. A bailout of PBGC? I do not know, Senator.

Senator SPECTER. Federal funding?

Mr. KANDARIAN. Of PBGC? I do not know the answer to that question.

Mr. KEIGHTLEY. Senator, other than a \$100 million line of credit that we could draw from Treasury in 1974, we have not drawn any Federal funds.

Senator SPECTER. But there was a line of credit in——

Mr. KEIGHTLEY. It was available——

Senator SPECTER. [continuing]. 1974?

Mr. KEIGHTLEY. I do not believe it was drawn on in 1974. It was a start-up, you know——

Senator SPECTER. But it was available.

Mr. KEIGHTLEY. It was available, but not used. Now, this is using pension assets and premiums.

Senator SPECTER. Well, the Federal funding was available at that time, and it would be an extraordinary Federal entity which never came to the Congress for money. Sort of unheard of in these legislative halls not to come to the Congress for money. Every time we turn around, somebody is doing just that. The term “bailout” is one of the most popular expressions in the Senate chamber.

Mr. KANDARIAN. I understand that, Senator, but we are trying very hard to not have this Agency come to the point of needing a bailout.

Senator SPECTER. Well, when you make a point about not wanting to have a bailout, I certainly agree with you. And when you make a point about the extent of the taxpayers’ money being involved, that is a relevant consideration. But if the US Airways proposal is not accepted, is it not true, Mr. Kandarian, that the PBGC is going to be left to pay the reduced pensions to the pilots?

Mr. KANDARIAN. That may happen, Senator, but that is not totally within PBGC’s control. In other words, US Airways and its lenders in the ATSB will decide ultimately whether this company gets money, whether it stays in business, whether it operates with all the pension plans intact or not.

Senator SPECTER. Well, that is not entirely so. There may be factors beyond their control where the pension plan does not continue and the PBGC is going to end up paying the reduced pensions. Is that not true?

Mr. KANDARIAN. We recognize that as a possibility, yes, and we accept that.

Senator SPECTER. Well, okay. I am not going to get into a discussion with you as to possibility, probability, likelihood. It is a possibility that the PBGC can end up paying the pensions.

Mr. KANDARIAN. Yes.

Senator SPECTER. Wouldn’t you rather not have the PBGC pay these pilots’ pensions?

Mr. KANDARIAN. All else being equal, yes. But if the answer is to stretch out the funding and possibly pay much more down the

road if the plan comes to us then—as occurred with Pan Am, as occurred with Eastern—I would have to say no.

Senator SPECTER. Well, you might not pay anything down the road with the plan going forward with a stretch-out on the contributions. But in what way would you end up paying more? Are you going to end up paying more than the pension benefits which go to these pilots in the absence of US Airways' plan going forward?

Mr. KANDARIAN. Yes, the underfunding could grow. That is correct.

Senator SPECTER. Well a lot of things could happen, but that could be curtailed by a variety of governmental agencies. If not the PBGC, the IRS, right?

Mr. KANDARIAN. No, not totally, Senator. The assets of the plan will be determined by the company itself, how they invest them, what happens in the stock market. Interest rates which affect liabilities is out of our control. Actual retirement patterns that occur at the company are out of our control. There are a number of factors that we cannot control at PBGC in terms of our exposure.

Senator SPECTER. Well, Mr. Kandarian, that may or may not happen. Those are a lot of contingencies on the economy and may occur, which may affect millions of people. But the fact is that if the US Airways plan is not adopted now, the PBGC is going to be paying the pilots' pensions which it would not have to now if the program was accepted. That is true, is it not?

Mr. KANDARIAN. Well, again, Senator, I do not want to parse words, but I do not want to be in a position of saying which of these plans should be terminated or not terminated. That is why I am staying away from that question. There are four plans.

Senator SPECTER. Well, Mr. Kandarian, parsing words is your business and my business. The question is: Will the PBGC not be paying these pilots' pensions if the US Airways plan is not adopted?

Mr. KANDARIAN. If the US Airways plan is not adopted and there is no other relief and the company decides it is the pilots' plan they wish to terminate for their financial reasons, then, yes, we will.

Senator SPECTER. Okay, that is the point. That is the point.

Mr. Keightley, thank you for joining us.

Mr. KEIGHTLEY. Senator, it is nice to be here.

Senator SPECTER. We look forward to your testimony.

Mr. KANDARIAN. Mr. Keightley is not testifying, Senator.

Mr. KEIGHTLEY. I do not have a fixed presentation, but if you would like me to say a little bit about the legal position, I will be glad to.

Senator SPECTER. Proceed.

Mr. KEIGHTLEY. We have looked at 4047, which is the Restoration of Plan Provision, which gives us authority to restore plans. The conclusion I came to was that the termination restoration would exceed our statutory authority.

Going to that question you raised a little earlier, we have to find authority to do the things we do. We are a creature of congressional statute. And we have not been identified as having the authority to waive funding.



In doing the analysis, I looked first at 4047, the statutory language. In there, in a number places where it says “restore,” it says “restore the plan to pretermination status.” In my judgment, and I think in the judgment of many people, restoring a plan with a promise to pay over 30 years is not restoring the plan as it was prior to termination.

Second, we looked at the legislative history. As was, to some extent, quoted in the opening testimony, we found language that suggested that restoration was appropriate when something had happened, such as a reversal of business trends, and it gives us some authority to undo something if there was, for example, a mistake of fact or law. But we do not think it goes so far as to allow us to alter the funding requirements.

Third, we looked at the entire structure of the ERISA provisions.

Senator SPECTER. When you talk about reversal of business trends, Mr. Keightley, why would that not provide at least some discretion for the PBGC in a situation like this?

Mr. KEIGHTLEY. It would have to—the termination would have to happen, and then the reversal of the business trends would have to take place, and then that decision would be made. I am not aware of any suggestion that there would be a reversal of business trend.

Senator SPECTER. Are——

Mr. KEIGHTLEY. In point of fact, the opinion of counsel for the US Airways suggested the sole purpose was to adjust the funding requirements, and had no other real purpose behind the termination restoration.

Let me do one final point?

Senator SPECTER. Well, just a minute.

Mr. KEIGHTLEY. Okay.

Senator SPECTER. Focusing for another moment here on your——

Mr. KEIGHTLEY. Certainly.

Senator SPECTER [continuing]. Language of reversal of business trends, would the reversal of business trends for US Airways caused by the terrorist attack of September 11 be a factor to be considered?

Mr. KEIGHTLEY. It is—“a favorable reversal of business trends,” is the language in the legislative history, so I do not think they were intending that it be a negative trend in business. It would be a favorable trend in business that they were trying to suggest——

Senator SPECTER. Well——

Mr. KEIGHTLEY [continuing]. Where a company could then afford to fund the plan.

Senator SPECTER. Well, how about a favorable reversal of business trends when US Airways is able to get concessions from all its employees and its suppliers and move forward with a new plan?

Mr. KEIGHTLEY. I would not normally——

Senator SPECTER. That is a reversal of business trends in a favorable direction.

Mr. KEIGHTLEY. Well, I do not know that I would characterize that as a favorable reversal of business trends. I would suggest, more normally, you would think of it as increased business, or greater profitability, an ability to have more income to pay your

bills and credit. So I am really trying to analyze how we got to our position.

Finally, we looked at the statutory structure. The three points I am making is——

Senator SPECTER. Well, Mr. Keightley, in addition to analyzing how you got to your position, I would like you to analyze how you might change from your position if you say that there is a standard here on a reversal of business trends in a favorable direction. Although what has happened to US Airways does not fit into some of the categories which you have described, is there not a little flexibility here as to what constitutes a reversal of business trends in a favorable direction?

Mr. KEIGHTLEY. I thought I was trying to be responsive to that. I do not think renegotiating and going through bankruptcy constitutes a favorable trend in your business. Now, I do not—I really did not research or do an opinion on that, but I would not normally characterize it that way.

Let me move on to my final point, which is that we looked at the statutory structure of ERISA when it was created. The IRS was clearly given the waiver authority. And going back to your point about what says we cannot do something, I would suggest you can infer from—that Congress gave waiver authority to the IRS and the absence of any language in our implementing provisions, that we were not given any waiver authority.

Finally—the waiver authority really deals with short-term business problems. And so Congress, in its wisdom, said short-term business problems would have waivers; long-term business problems, you will have a distress situation. And that is the—that is how it all ties together as a statutory matter and how I come to the conclusion that the corporation is without statutory authority to agree to a termination restoration with a 30-year funding.

Senator SPECTER. Mr. Keightley, picking up on your opinion on page 2, the last sentence, the second paragraph: “While section 4047 broadly authorizes restoration of a terminated plan whenever PBGC determines that a restoration is, ‘appropriate and consistent’ with its Title IV duties, we do not believe it would be appropriate and consistent with PBGC’s duties to use restoration in this manner.”

Now, I understand what you are saying about the IRS authority, but the IRS authority is interwoven with the PBGC authority where you really have a much broader range of responsibilities on pension plans. And where you pick up this language, “appropriate and consistent,” is that language not really the broad authorization that you referred to in the early part of the sentence, which could give you the sufficient flexibility if, as a matter of your discretion, you chose to do so?

Mr. KEIGHTLEY. I do not think that it is a matter of discretion. I believe, in light of the waiver authority provided to the IRS, for us to interpret that provision as we have characterized it, a super-waiver provision, would be essentially ultra vires for the corporation.

Senator SPECTER. On page 2 in your first full paragraph, in the second sentence, you are referencing, again, section 4047, and you say: “It empowers PBGC, ‘in any such case in which [PBGC] deter-

mines such action to be appropriate and consistent with its duties under [Title IV], to take such action as may be necessary to restore the plan to its pre-termination status.”

While the US Airways plan which was approved by the pilots is different as to funding schedule, could it not really be regarded as bringing restoration to its pre-termination status, which would, under your own analysis, give the PBGC the discretion as to what is appropriate and consistent with the underlying purpose of the statute?

Mr. KEIGHTLEY. I do not believe that allowing them to restore the plan with 30-year funding, contrary to the current statutory funding requirements, would be returning the plan to its current status or its pre-termination status. Funding is critical to the survival of these pension plans.

A point to be made is that the funding—my view, although I cannot cite legislative history—was intentionally structured very specifically and objectively so that employees could not be sort of manipulated into saying: “Oh, you don’t have to put my money in there.” So when we talk about if all the employees agree that: “I don’t have to put money in,” that would be a difficult, I think, precedent for Congress even to endorse, because of, in some cases, the strong leverage that an employer would have over the employees to extort, essentially, funding waivers.

So I think there is a good policy behind very tightly structured, objective funding requirements.

Senator SPECTER. As I had referenced before Senator Santorum arrived at the hearing, he and I had introduced legislation last Thursday. Have you had a chance to examine that, Mr. Kandarian?

Mr. KANDARIAN. I have seen the legislation, yes.

Senator SPECTER. Would you render a negative view as to discouraging Congress from adopting that?

Mr. KANDARIAN. Yes, Senator. Our concern is basically the slippery slope argument, so that if we give it for US Airways, where do we draw the line? A lot of companies right now are highly underfunded in their pension plans, and a number of companies in the economy today are not doing well. They have financial problems.

Senator SPECTER. If we level the slope by specifying a very narrow range of circumstances applicable to this case so that it does not become a precedent for other cases, would you withdraw that objection?

Mr. KANDARIAN. I do not see how we can do that, Senator. I do not see how we can say this company gets one set of funding rules but other like companies do not. We think that will be unfair in terms of the competitive environment in the marketplace as well.

We also think that the funding-rule tightening that occurred in those other years I mentioned in my testimony was important to try to limit underfunding, to limit things like this in terms of plans being highly underfunded. And currently within the administration we are looking at ways to further tighten these rules. For us to endorse something as stretched-out funding at a time when we are looking at ways to make funding stronger would be inconsistent, Senator, which is why it is hard for us to support something like this.

Senator SPECTER. What are you looking at to make the rules, as you say it, stronger?

Mr. KANDARIAN. There are a number of proposals that are being discussed within the administration. Nothing has been endorsed at this time that I can really state publicly. But basically, to make funding more stringent, to not allow plans to get as underfunded as these plans are.

Senator SPECTER. Well, does the IRS have the authority under existing law to step in and look at underfunded plans and require corrective action?

Mr. KANDARIAN. If there is missed minimum funding. But, for example, these plans, as you point out, are underfunded and there was no missed minimum funding. So that goes to the issue of the funding laws themselves. Are they adequate?

Senator SPECTER. Well, should there be modifications of the funding laws?

Mr. KANDARIAN. Again, we are discussing that internally within the administration. I have put together some thoughts on that, and it is still being considered.

Senator SPECTER. Do you have any reason to believe that US Airways could not carry forward the plan which they have proposed on the 30-year funding and make a success of the revised funding proposals?

Mr. KANDARIAN. In terms of their ultimate success as a company?

Senator SPECTER. Correct.

Mr. KANDARIAN. I do not know whether they will be successful. There are a number of factors that we cannot predict here today, in terms of war in Iraq and business travel——

Senator SPECTER. I know——

Mr. KANDARIAN [continuing]. And all the rest.

Senator SPECTER [continuing]. I know you do not know, and I know that there are a lot of contingencies. But the question is, Do you have any factual reason to believe that US Airways would not be successful in its proposed plan for the extended funding?

Mr. KANDARIAN. Well, I have seen their numbers, and I have seen their business plan, and it is a tight plan, even with all the things they are doing. And I applaud their efforts. But still, it is very tight financially.

Senator SPECTER. Okay. I will take that, tight, but no factual reason to believe it could not work. Correct?

Mr. KANDARIAN. I think I will stand by my answer, Senator.

Senator SPECTER. Well, that would be fine if I knew what your answer was, Mr. Kandarian.

That would be fine, Mr. Kandarian. Do you have any reason to think US Airways cannot succeed, except for the various contingencies like the Iraq war? We are trying to find an answer here, Mr. Kandarian. If you have some reason to doubt it, say so. And if you do not have some factual reason to doubt it, say that.

Mr. KANDARIAN. Well, I am not expressing an opinion about whether US Airways will or it will not be successful with its—their business plan. What I am discussing is the integrity of the defined benefit insurance system that protects 44 million working Americans, and that is what I am focused on.

I think this effort would, in the long-run, be detrimental to the overall system. That is my position.

Senator SPECTER. Senator Santorum, would you care to question?

OPENING STATEMENT OF SENATOR RICK SANTORUM

Senator SANTORUM. Thank you, Mr. Chairman. Can I use that term? "Chairman"?

Senator SPECTER. There was a long colloquy on that before you arrived, Senator Santorum, and—

Senator SANTORUM. Well, Mr. Chairman, slash, ranking member—

Senator SPECTER [continuing]. The answer to that is about as vague as Mr. Kandarian's testimony.

Senator SANTORUM. We have been working on that. And I apologize for being late, but I have been working on several issues and trying to get us moving here in the Senate, and I will dispense with my opening statement and ask for it to be placed in the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR RICK SANTORUM

Chairman Harkin and Ranking Member Specter, I appreciate you holding this important hearing today on the status of the US Airways' pension plan. US Airways employs more than 17,000 people in the Commonwealth of Pennsylvania through two hubs in Pittsburgh and Philadelphia. Without a doubt, the airline is a major presence in the Commonwealth, and it's been an honor to work closely with their employees and management team over the past several years on a variety of issues. I am pleased that we are joined today by Allegheny County Chief Executive Jim Roddey who has been an effective partner in the Pittsburgh region.

The status of US Airways' pension plan is pivotal to the successful restructuring of the airline. In July 2002, the airline was granted conditional approval by the Air Transportation Stabilization Board (ATSB) for a \$1 billion loan guarantee. A condition of that loan was presenting a solid financial plan proving the airline could meet its financial obligations over a seven-year period throughout all segments of its operations. Currently, US Airways' obligation to its pilots' pension fund—along with other obligations—compromise the ability to make required payments to both the pilots' pension fund and a potential loan guaranteed by the ATSB.

Last week, Senator Specter and I spearheaded an effort that would have paved the way for US Airways to restructure their pilots' pension plan. In an unprecedented effort, the pilots and the airline management came together in late 2002 to forge a revised pilot pension plan that would significantly help the airline in the reorganization efforts. The plan would spread the funding payments over a schedule of 30 years. The airline would fully honor its obligations to pay pension benefits to its pilots, and the extension would not interfere in the payment of those benefits. That proposal was then presented to the Pension Benefit Guaranty Corporation (PBGC) for their approval.

In late 2002, the plan was considered by the PBGC, and the result was that there is no legal authority in pension law to grant the request. Last week, I introduced S. 119 with Senator Specter. This bill would have provided a change in ERISA law allowing for the PBGC to approve the 30-year pension payment schedule. S. 119 was considered on the Senate floor last week. Members of the Finance Committee objected, however, on the grounds that it should be considered in the realm of overall pension reform.

While I was certainly disappointed with the outcome of considering S. 119, I look forward to working with my fellow Finance Committee members in the near-term as the committee focuses on the important issue of pension reform. Further, I trust this hearing will result in a constructive dialogue with the PBGC who is testifying today. I look forward to hearing from them regarding viable options as the airline continues to pursue a financial restructuring that is sound for the employees and ultimately the longevity of the airline.

I appreciate having the opportunity to share my thoughts with you on this issue of importance to the Commonwealth and the thousands of employees and families

who are affected by these decisions. Thank you, Mr. Chairman and Senator Specter for holding this hearing, and I look forward to our continued work and cooperation on this matter.

Senator SANTORUM. I want to thank Senators Harkin and Specter for calling this meeting. This is a very important hearing, obviously of great importance to the people in my State and, I would argue, all travelers in the—particularly in the eastern seaboard.

I just want to follow up with, maybe, Senator Specter's line of questioning here. Let me understand this, that US Airways was meeting their obligations under law. They were funding at the level that they were required to under law. Is that correct?

Mr. KANDARIAN. That is correct.

Senator SANTORUM. Okay. And that the concerns, from what I read from your document, that the Congress had and that you had was that companies would deliberately underfund their pensions, not meet their obligations, and then go into this situation where they would seek waivers, or they would seek relief. That was—

Mr. KANDARIAN. I do not think we said that, Senator.

Senator SANTORUM. Okay. I thought I read that.

Mr. KANDARIAN. I am not sure who you are referring to.

Senator SANTORUM. I do not know whose testimony I was reading. I was trying to catch up here real quick.

Well, that is my—that was the impression I got from reading this, that that was what the Congress was concerned about. And as soon as I page through here and find that—I think it was—let me see, where is it? Yes, "The Senate Finance Committee believed that these tighter waiver rules were necessary because of—they used, for funding waivers in the past, to minimize plan contributions and that, you know, GAO found that 30 percent of the claims against PBGC during the period resulted from failure of employees to make required plan contributions prior to plan termination."

I mean, this is in your testimony, is it not?

Mr. KANDARIAN. I thought you were referring to my comments—

Senator SANTORUM. No, I said your testimony.

Mr. KANDARIAN [continuing]. About US Airways.

Senator SANTORUM. No, in your testimony—

Mr. KANDARIAN. Yes.

Senator SANTORUM [continuing]. I think I mentioned "the Finance Committee's concern."

Mr. KANDARIAN. Right. We were quoting the Finance Committee's—

Senator SANTORUM. I think I said that.

Mr. KANDARIAN [continuing]. Deliberations at that time.

Senator SANTORUM. Okay. My point was that that is what is Congress' concern, that there would be some deliberate attempt here for people to game the system. Are you suggesting that US Airways was gaming the system here and—before they asked for this?

Mr. KANDARIAN. No, but those were for waivers. And US Airways can still—

Senator SANTORUM. I understand.

Mr. KANDARIAN [continuing]. Apply for waivers.

Senator SANTORUM. I understand.

Mr. KANDARIAN. And we do not object to US Airways applying for waivers under the existing rules.

Senator SANTORUM. I understand that. But I guess the point I tried—I think is illustrative is that Congress was concerned—and I know I, as a Congressman, was concerned, as a member of the Ways and Means Committee, when we dealt with this issue at the PBGC—was concerned about systematically underfunded plans and the result and impact of that on the taxpayer and that obviously, if that was the case here, coming in and trying to get a reorganization or restructuring, I would not be particularly sympathetic to. That is not the case here. That is clear, correct?

Mr. KANDARIAN. We are not suggesting that US Airways deliberately underfunded their plans, but their plans are highly underfunded. They had flexibility at points in their history to better fund these plans. They did not take that avenue.

Senator SANTORUM. Okay. Here is the other point that I am a little bit concerned about. And again, just speaking from the standpoint of a Member of Congress, and looking at what actions are—or certainly seem to be in the offing here, we have a situation where if we proceed with US Airways terminating their plan and PBGC picking it up—did you already testify as to what the cost associated with that would be for the taxpayers?

Mr. KANDARIAN. We did not testify to that yet.

Senator SANTORUM. Do you have a figure on that, what the cost—

Mr. KANDARIAN. Are you referring to all plans, or one plan, or how many plans?

Senator SANTORUM. Well, let us just assume that they—for purposes of this discussion, since the biggest—obviously, the biggest plan is the pilots' plan, let us just look at the pilots' plan. What would that be if they terminated that plan?

Mr. KANDARIAN. Based upon the data we have been given to date, we think it is about \$500 million.

Senator SANTORUM. \$500 million over how long a period of time?

Mr. KANDARIAN. That would be paid out over a number of years, based upon the lives of the people who are receiving the pensions.

Senator SANTORUM. Okay. And if we were to—if they were to terminate all the plans, what would that be? Do you know?

Mr. KANDARIAN. Excuse me, the \$500 million number is a present-value number. Okay? So it is discounting back those payments.

Senator SANTORUM. Okay.

Mr. KANDARIAN. It is worth, today, \$500 million.

Senator SANTORUM. Okay. And if they were to terminate all the plans, do you—

Mr. KANDARIAN. We think—

Senator SANTORUM [continuing]. Have that?

Mr. KANDARIAN [continuing]. It would be just over \$2 billion, in terms of our guarantee.

Senator SANTORUM. Okay. Now, my question to you is, again, I—just from a public-policy point of view—I am trying to figure out why it makes sense, from a public-policy point of view, to take on that liability when there is an opportunity to defray that liability—

potentially indefinitely, potentially forever—and why that makes good public-policy sense.

Mr. KANDARIAN. For two reasons. One I mentioned, perhaps, before you entered the room, Senator. In the late 1980s, there were funding waivers that were much more liberally granted than today, and they were given to, for example—

Senator SANTORUM. But we are not asking for a funding waiver here, are we?

Mr. KANDARIAN. No, but it would be similar in its impact in stretching out the funding by a company, to fund the existing underfunded part of their plan.

Senator SANTORUM. Then why does my question about waivers count, and yours, analogizing waivers, does not count? I mean—or the other way around—why, when I analogize this issue to waivers, you say it is not valid, and now you are analogizing this situation to waiver, and it is valid?

Mr. KANDARIAN. I do not know, Senator, exactly what you are referring to, but let me—

Senator SANTORUM. Well, I analogized that you—I made the comments that the Finance Committee said that we had these deliberate underfundings—

Mr. KANDARIAN. Right.

Senator SANTORUM [continuing]. And you said: “Well, that only deals with waivers; that does not deal with plan terminations and restarts.” And I said: “Okay, I will accept that, that it deals with waivers,” and now you are answering my question—answering it with a waiver.

Mr. KANDARIAN. We characterize the restoration proposal by US Airways as a super waiver, in a sense. It stretches out, over 30 years, payments that would normally be made over 5 or 7 years. So the answer to your question is two-fold. Number one, the hole may get larger over time. And if the plans are terminated at some point down the road, there could be a much larger hit to the system.

Senator SANTORUM. Can you not restructure—I mean, from a negotiating standpoint, can you not require certain payments from US Airways to make sure that that does not occur? I mean, is there not a way to avoid that problem down the road?

Mr. KANDARIAN. It literally cannot be done. And it cannot be done because there are factors out of our control and US Airways’ control that relate to the value of the assets in their plan, the stock market interest rates, experience with people retiring, at what age they retire, a number of lump sums—people taking lump sums out of the plan, which could be significant.

If you are a worker at US Airways and you are worried about this plan because it is so underfunded and you have an option to take a lump sum out, you might just well take that money out with you rather than be a creditor, if you will, to the plan.

Senator SANTORUM. I understand that, but can you not put something in a negotiated settlement that would require increased funding of a plan if such an occurrence happened in the future to make sure that there was a certain level—

Mr. KEIGHTLEY. I was just going to say, they do not have the money to do it. I mean, being—knowing what is going on in the



bankruptcy, it is all driven by a limited resource pool and a limited income stream. And so there is really no——

Mr. KANDARIAN. If they could do that, they would not need what they are asking for. So what they are saying is, as we understand it: “Unless we can get our pension obligation down to this fixed amount”—they are using, I think, \$285 million—“we cannot get our loan, we cannot get this, we cannot get that.”

Mr. KEIGHTLEY. Right.

Mr. KANDARIAN. PBGC cannot turn around and say: “Now give us the monies we need to fill our hole,” because now there are lenders—there are equity players who will say: “Wait a minute, if that goes out the door for the same reasons we are saying no to you right now about giving you a loan or equity”——

Senator SANTORUM. Well, this is post the restructuring of their plan, though. So assuming they have restructured their plan to anticipate these things—I mean, I assume that—no one is going to sign off—that the union and that creditors are not going to sign off on a plan that is a pie-in-the-sky kind of payout plan—I mean, I would make that assumption. I mean, these are solid—this is an arm’s-length transaction with business people who are going to look at this: “Is this a reasonable amount to anticipate, as far as payout, over the next x-number of years to—on these pension plans?” And what you are saying is—are you saying that you do not believe that those numbers are a reasonable approximation of what would be anticipated?

Mr. KANDARIAN. I was trying to answer your question—“Can we limit our liability from growing?” I thought was your question.

Senator SANTORUM. It is my question. But what you are saying——

Mr. KANDARIAN. And my——

Senator SANTORUM [continuing]. Your answer to that question was, no, you cannot, because you anticipate that there are contingencies that will develop that will cause a bigger hole. That is what you said.

Mr. KANDARIAN. We do not know whether that will occur or not.

Senator SANTORUM. Well, I know you do not know, but what I am asking you is: Are you suggesting that what they have done is not taken into account those contingencies in laying out this plan?

Mr. KANDARIAN. Yes, they have not taken that into account.

Senator SANTORUM. Okay. And you think that the lenders have gone along with what you would argue is a rather tight non-contingent kind of arrangement?

Mr. KANDARIAN. The lenders do not care about PBGC’s fortunes. They care about their fortunes. So if the hole gets bigger for us, that is not a concern to the lenders or to the equity players. We are an unsecured creditor. We are behind the secured creditors. That does not affect them.

Senator SANTORUM. Yes, well, I would think they would be concerned if they get in a position where they have a situation where they cannot meet their pension obligations and end up with a lot of problems with their unions. I would think that that might draw into their concern. But again, I could be wrong on that.

Mr. KANDARIAN. Well, let me say that the second reason why we are concerned—not just that there may be a bigger hit down the

road to us—is the integrity of the overall system and the slippery slope. How do we say no to the next air carrier that has a problem today? How do we say no to other industries that have difficulties today with highly underfunded plans? I think all of us have been reading in the press recently the extent to which underfunding has now been created based upon lower interest rates and lower stock-market values. If we start breaking down the integrity of that funding system on a case-by-case basis, I do not know how we say yes to one and no to the others.

Then we are back to a situation where—we began with in ERISA in 1974, when the funding rules were very loose and plans came in highly underfunded, and we got bitter letters and complaints from constituents and from Members of Congress about: “I had no idea my plan was so underfunded. I had no idea that PBGC limits that are set by Congress were going to haircut me in this way or that way.”

So we are trying to look at the entire system, the integrity of the system, for the 44 million Americans who count on us for their retirement security.

Senator SANTORUM. Have you ever had something like this brought to the PBGC before, where management and labor came in and offered to do a restructuring like this?

Mr. KEIGHTLEY. I have been there 7 years, and I have never seen it done formally. We, at least once before, had somebody come in, sort of: What do you think? And we went: No, that is not going to work. So we have not seen any.

The point I was making earlier, it is not purely a matter of the employees. There might be some cases where that kind of arrangement would—could be used by a strong employer to really extort inappropriate changes in the pension funding. I am just saying that is a decent policy reason why you want a tightly structured funding system. And even at that, companies have some discretion as to how they fund and what assumptions they put in there. And there is some judgment in there being done by actuaries and outside people, but—so there is some discretion in the process.

Senator SANTORUM. Yes, I understand. But in this case, are we not looking at what the renegotiated—well, the plan presented by US Airways would actually be better for their employees than if the plan were terminated? Is that accurate?

Mr. KEIGHTLEY. It depends on—some people, it would. I do not know the—you know, you have to look at everybody to see who wins and who loses.

Senator SANTORUM. Well, I am not going to go down and ask every individual—

Mr. KEIGHTLEY. No, no, but I mean, they—some people keep their jobs; other people—you have to, sort of, look at that. If some—a young employee—and you terminate the plan, the company may stay there a long time and may do better by having accruals under some other pension plans. You know there are winners and losers whenever a plan terminates.

Mr. KANDARIAN. Senator, there are 60,000 participants, approximately, in the US Airways plan, and about 35,000 active workers. The vast majority of the people will get over 90 percent of their benefits based upon today’s cut-off if any of these plans came in to

us today. The pilots' plan, because it is so highly compensated, is where the guarantee limits really cut in. So the vast majority of the workers in this plan will get over 90 percent of their benefits paid by us.

Senator SANTORUM. So basically, you are saying, other than the pilots, by and large——

Mr. KANDARIAN. Yes.

Senator SANTORUM [continuing]. You are talking most of the folks are going to get, basically, what they would under any kind of renegotiation that has already occurred with US Airways.

Mr. KANDARIAN. To date, in other words. I mean, if time stopped today, our payments would be 90 percent or more for the other plans, other than the pilots' plans. Now, if US Airways did a distress termination on the other plans and they came to us today, of course they would not get accruals for future work. So I cannot say they would not be hurt in that sense, but I do not think I have heard of any discussion of distress terminations for the other plans.

Senator SANTORUM. Thank you, Mr. Chairman, I appreciate it.

Senator SPECTER. Thank you very much, Senator Santorum.

I would like to have Mr. Kilberg step forward before Mr. Kandarian and Mr. Keightley are excused.

Mr. Kilberg, would you step forward?

As I had referenced earlier, there is an opinion from Mr. William Kilberg and Mr. Gary M. Ford on the same issue, and before Mr. Keightley and Mr. Kandarian leave, I would like to ask Mr. Kilberg a question or two.

This opinion letter was rendered by Mr. Ford—Gary M. Ford and William J. Kilberg to US Airways, and may the record show that Mr. Ford, who could not be here today, served as General Counsel to the Pension Benefit Guaranty Corporation; same position that you hold, Mr. Keightley. And the opinion registered by Mr. Ford and Mr. Kilberg, the conclusion I will read briefly, is contrary to what you have testified to.

They concluded: "PBGC has broad authority to restore a terminated plan and, once the plan is restored, PBGC can issue a restoration funding order that complies with the regulation funding regulations. The PBGC has discretion regarding restoration and an appropriate restoration funding schedule. As applied here, termination/restoration could be made available only in the rare circumstance where plan termination is the only other option and the plan sponsor is in bankruptcy, can not meet minimum funding standards even with funding waivers, wishes to continue funding its plans, has taken all other reasonable steps to reduce benefit costs and permit continuation of the plans and has the resources to meet restoration funding requirements."

Mr. Keightley, do you disagree with that?

Mr. KEIGHTLEY. Clearly.

Senator SPECTER. Mr. Kilberg, you have heard the testimony of Mr. Keightley. What is your analysis and conclusion of it?

Mr. KILBERG. I have a great deal of respect for Mr. Keightley, but both Mr. Ford and I disagree with his opinion. The restoration or the authority to restore a plan is stated in ERISA in section 4047. And while Mr. Ford was General Counsel at the PBGC, I have had the honor of being Solicitor of the Department of Labor,

and I was Solicitor in 1974, when the statute was passed and the initial restoration authority language was put in. It is very, very broad. It allows the PBGC to restore a plan when it is to be terminated or is in the process of termination. So a plan does not actually have to have been terminated in order to have it restored.

The Supreme Court has had an opportunity to look at this language in one case—the LTV case, the only instance where there has been a plan restoration—and in that decision, the court said that a plan can be restored when restoration would further the interest that Title IV of ERISA is designed to protect.

When we look at the interest as set forth in the statute, the preamble to the statute, it really—just three—it is to keep premiums at a reasonable level and to keep plans going and paying benefits. And it was our conclusion that, in this instance, a plan termination and a restoration funding schedule which allowed a 30-year period of amortization would do precisely that.

The PBGC and Mr. Keightley, in his opinion, says that funding relief is not a proper purpose. I cannot disagree with that, but I would assert, respectfully, that it is a proper method permitted by the statute in order to achieve the statutory objectives of maintenance of plans and their benefits and to keep PBGC premiums at a reasonable level.

That is basically the sum and substance of our disagreement. There is relatively little case law. You will note Mr. Keightley's opinion does not cite any. There is just the LTV decision. But we believe that that, combined with the language of the statute and its purposes, would support the argument that the PBGC has discretion to work out a restoration funding schedule if it chose to do so with an employer like US Airways that is in bankruptcy, where there is no question but that a distress termination would be appropriate, where it is able to fund those benefits over time, and, frankly, where it has received unprecedented concessions from its unions, giving up going-forward benefits that make the ability to fund this plan over time a great likelihood.

Senator SPECTER. Would you amplify your analysis of the one decision by the Supreme Court of the United States on this general area, which signifies to you the Supreme Court's interpretation of legislative intent and public policy in this matter?

Mr. KILBERG. Well, in LTV, it was LTV's decision to create a follow-on plan which mirrored the plan that it had terminated that caused the PBGC to first take the position that the termination was a sham and then to insist that it could restore the plan to LTV and create a new funding schedule.

That case was hotly litigated. It went to the Supreme Court, and the Supreme Court interpreted the statute to give the PBGC an extraordinarily broad grant of discretion, as I indicated, to restore a plan when restoration would further the interest that Title IV of ERISA is designed to protect.

The court went further and said that in carrying out this specific and what it called an "unambiguous statute mandatory mandate," the PBGC is not required to focus on the policies and goals of other statutes. In other words, one of the arguments that LTV was making was that because of the Internal Revenue code and other statutes, the PBGC could not exercise its authority to restore the plan

and to impose a funding requirement upon LTV. The court said that PBGC, in fact, has that very, very broad authority.

Senator SPECTER. Mr. Keightley, would you care to comment on Mr. Kilberg's testimony?

Mr. KEIGHTLEY. First, I would like to comment that the Supreme Court, contrary to the trial court as well as the Court of Appeals, deferred to the interpretation of the PBGC as to what a statutory authority was in that particular case. And that particular case was not at all analogous to the situation. In that case, the LTV plans had been terminated in order to avoid shut-down benefits. After that took place, the unions and management agreed to, basically, pension plans that made retirees, as I understand and read the opinions, 100 percent whole and many of the others substantially whole, with the PBGC paying the basic benefits, and then they made up the rest in this what we would call an "abusive follow-on plan." So they were letting us absorb their pension costs; and, to the extent that you view that as a labor cost, that is completely. And the court said we had the authority to construe the restoration authority in that context.

In my view, that has no connection with the current situation at all. I would say that they said we had broad authority in interpreting our statute in order to come to that result, but they deferred to our interpretation and agreed with us. And, as I say, I just do not see taking that language. There are limits to what I think we can do under that statute, and I think you folks are, you know, US Airways folks are asking us to go beyond that.

I might point out that there is no question that the purpose, reading from the joint opinion of the termination restoration, is to provide funding relief for US Airways and pension plans. There is just no question about that. And so, again, we think Congress addressed that issue, told everybody who had that authority, limited the waivers. If you remember the waivers in the IRS context are, you get to waive it and spread the funding over, say, 5 years, I believe. Much shorter period of time.

So Congress has addressed that issue and built that limited waiver provision into ERISA, and that is how I get to the conclusion that PBGC does not have that statutory authority, and other government agencies only have a very limited statutory authority, which US Airways has advised us does not meet their needs, financial needs.

Senator SPECTER. While there is no doubt that the LTV case is very different factually, your response does not really go to the basic point that Mr. Kilberg made with respect to the Supreme Court's determination that the PBGC has broad authority and broad discretion to interpret the statute. Do you disagree with Mr. Kilberg's statement as to the Supreme Court's decision in that respect?

Mr. KEIGHTLEY. We have broad authority within the statutory limits.

Senator SPECTER. Do you think if you made a finding, as Mr. Kilberg says you have the authority to do, if that was your decision within your broad discretion, that that would be upheld by the Supreme Court?

Mr. KEIGHTLEY. I do not believe—if the purpose was the termination, to provide funding relief for US Airways, I do not believe the Supreme Court, or, for that matter, any other court, would uphold that position.

Senator SPECTER. Mr. Kilberg, do you think the rationale of the Supreme Court is broad enough to uphold that position?

Mr. KILBERG. I do.

Senator SPECTER. Senator Santorum, anything further?

Mr. KEIGHTLEY. One last point. I might point out that in the bankruptcy proceedings in response to our opposition to their termination restoration, they have abandoned that position and are now pursuing legislative relief plus a termination, and we intend to be working with them on some other solution. But at this time, they are not pushing that, and litigating it in the bankruptcy court is the point.

Mr. KILBERG. With all due respect to Mr. Keightley, no one questions that the PBGC has discretion. The PBGC does not have to agree to terminate a plan. The PBGC does not have to agree to restore a plan. It certainly does not have to agree to a particular restoration funding schedule if it does decide to restore a plan. So this is all within the Agency's discretion, and we respect the Agency's decision in this regard. Not much choice about it. We would not have standing to raise a complaint in a bankruptcy court or anywhere else.

Senator SANTORUM. Because what you would raise is that they have the discretion.

Mr. KILBERG. Exactly.

Senator SANTORUM. You certainly cannot litigate something where you are saying they have discretion and then argue that—I guess you could argue they abused the discretion.

Mr. KILBERG. That would be a very difficult argument. Certainly the PBGC has policy reasons. We may not agree with them, but that does not mean that they abuse discretion for them to assert them.

Mr. KEIGHTLEY. I continue to say we do not believe it is a discretionary area when the sole purpose is altering the funding. That is the purpose—that is the reason we are being asked for this, and that is beyond our statutory authority. There may be other areas where we have discretion that is within that authority, but it does not extend this far.

Senator SANTORUM. Do you agree that is the purpose?

Mr. KILBERG. No. That is the method, obviously. And I had the same point, Senator, that you had earlier, the confusion between a restoration funding schedule and a waiver of funding.

A waiver of funding is a term of art. It does go to the Internal Revenue Service. There are very, very strict limitations. They would not help US Airways in this instance. They are really not for this purpose. What we are looking for, clearly, is something far more creative, but something we believe that, if it could be achieved, would help US Airways to come out of bankruptcy and would serve the interest of its employees as well as the company.

Mr. KEIGHTLEY. May I read one sentence for the record from the December 13 memorandum signed by Mr. Kilberg? "The purpose"—

Senator SPECTER. Where are you reading from?

Mr. KEIGHTLEY. I am reading from the December 13 memo of Mr. Kilberg and Mr. Ford.

Senator SPECTER. I understand that, but where from the memo?

Mr. KEIGHTLEY. In the first paragraph. "The purpose of the termination/restoration"—I underscore "purpose"—"is to provide funding relief for US Airways' pension plans."

Senator SANTORUM. Mr. Kilberg.

Senator SPECTER. Well, there is no doubt about that, is there?

Mr. KILBERG. There is no doubt. There is no about that, but that is our purpose. The question earlier was "purpose under the statute." They said that that was not a purpose under the statute. When we use the term "purpose," we are using it as a method. That is the method that we thought would best—

Senator SANTORUM. To accomplish what purpose under the statute?

Mr. KILBERG. To accomplish the purpose under the statute that would—from the PBGC's standpoint, that would maintain premiums, and from the company employees' standpoint, that would restore the plan and would allow the employees to obtain the benefits under the plan. Those are the statutory purposes.

We used the term "purpose" here—we were not talking about statutory purpose, we were talking about our purpose.

Senator SANTORUM. Mr. Keightley, is the method by which Mr. Kilberg has suggested US Airways wants to achieve its purposes proscribed by the statute?

Mr. KEIGHTLEY. Yes, it is beyond our statutory authority—

Senator SANTORUM. But is it proscribed?

Mr. KEIGHTLEY [continuing]. Whether it is a method or a purpose.

Senator SANTORUM. Is it proscribed by the statute?

Mr. KEIGHTLEY. Is it specifically proscribed?

Senator SANTORUM. Is it proscribed—

Mr. KEIGHTLEY. There is no statutory language that says we cannot do this. But it—my earlier position, as I have articulated, is we have to find statutory authority to take the actions that we take. There is no statutory to do this. The IRS has been given the statutory authority.

Senator SANTORUM. Well, is it—are you suggesting that Mr. Kilberg's assertion that the purposes that he has outlined are invalid, that that is not what is going on here—

Mr. KEIGHTLEY. They—

Senator SANTORUM [continuing]. Or you do not believe that those are—I mean, there may be—let us put it this way. Let us assume that you are right, that the purpose is to relieve their funding. But that is not proscribed under the statute. But additional purposes may be—

Mr. KEIGHTLEY. Or authorized.

Senator SANTORUM. Pardon?

Mr. KEIGHTLEY. Nor authorized.

Senator SANTORUM. Let me follow through.

Mr. KEIGHTLEY. Okay.

Senator SANTORUM. It is not proscribed by the statute. Do we all agree that there may be more than one purpose to this request?

Mr. KEIGHTLEY. Let me address the purposes. The purposes are the purposes of ERISA, in general. You can—they do not authorize specific acts by the PBGC corporation. So you could find all sorts of things that someone might do saying—and argue——

Senator SANTORUM. But do those purposes not—are those not the things that give you the discretion to act?

Mr. KEIGHTLEY. No, they do not, in my opinion.

Senator SANTORUM. Now, what gives——

Mr. KEIGHTLEY. They are——

Senator SANTORUM [continuing]. The discretion to act?

Mr. KEIGHTLEY. The specific implementing statutory authority, the—that we went through earlier. I mean, I can—let me pull it back out again.

We are dealing with 4047. That is the authority for restoration of plans. I mean, do you want my little spiel?

Senator SANTORUM. Yes, I would love to hear you. I am sorry. I——

Mr. KEIGHTLEY. Okay. That is——

Senator SANTORUM [continuing]. Do not want everybody——

Mr. KEIGHTLEY. I am sorry.

Senator SANTORUM [continuing]. To hear it again, but I have not heard it.

Mr. KEIGHTLEY. I did not recall whether you were here for that or not. Anyway——

Senator SANTORUM. I was not.

Mr. KEIGHTLEY [continuing]. That is the authority, 4047, for the restoration of plans. We looked at the statutory authority. In there, there is some specific language which says that—to restore the plans to their pre-termination status. In our view, restoring the plans with drastically altered funding requirement is not returning them to the pre-termination status.

Senator SANTORUM. It is also a drastic——

Mr. KEIGHTLEY. Okay.

Senator SANTORUM [continuing]. It is also a drastically altered benefit.

Mr. KEIGHTLEY. I do not disagree with that, but I am trying to get to what I think this corporation has been authorized to do under 4047.

So anyway, we looked at that piece. We also looked at the legislative history, which suggests that we could restore a plan if favorable reversal of business trends or some other factor made termination no longer advisable. In our view, as I said earlier, a mistake of fact, a dramatic improvement in the business climate, they discover oil on a piece of property that is in the pension plan and suddenly they have got enough money to pay everybody off—we think that is the kind of authority that we were being given with that particular language.

Finally, the point we looked at was the overall statutory structure of ERISA, which really has dealt with the problem of plans—companies and plans not having the ability to pay. They have a short-term waiver provision which they have put into the statute, and they gave that authority to the IRS. For longer terms, they can go into bankruptcy and show the bankruptcy court that they are unable to carry these plans and function as a successful business,



and they can shed that liability. That is the way Congress structured it. And they did not provide us any statutory authority to enter into this kind of arrangement. And that is my analysis of where we are, and I think, you know——

Senator SANTORUM. Mr. Kilberg, can you deal with the 4047 issue?

Mr. KILBERG. Sure. I am not sure anybody is really enjoying this debate between lawyers, but sure. When 4047 talks——

Senator SANTORUM. Well, this is a serious issue to us, so I am enjoying it greatly, actually.

Mr. KILBERG. When 4047 talks in terms of restoring a plan to the status it had, you have to look at how that term, “status,” is used in ERISA. That means a non-terminated status. In other words, return it to its active status. It does not mean return it exactly as it was before.

Indeed, the PBGC’s regulations do not talk about returning it to its precise mirror-image plan or terms; it says: “to ongoing status and to help ensure that the restored plan will continue to be ongoing consistent with the best interest of the plan’s participants and beneficiaries.”

Senator SANTORUM. So pre-termination status does not mean identical to——

Mr. KILBERG. No.

Senator SANTORUM [continuing]. What it was prior to termination.

Mr. KILBERG. I do not believe it does. I do not believe that is the way it was supposed——

Senator SANTORUM. Well, I understand you do not believe it does, but what does—what do the statute and the regs say?

Mr. KILBERG. Well, the regulations—the language of the regulations would be consistent with our interpretation, I believe; inconsistent with the corporation’s interpretation.

Senator SANTORUM. Can you stop there? Can you please address that?

Mr. KEIGHTLEY. It is pretty clear that you have to look at the whole statutory structure here to see where the waiver authority is located. And we are taking some broad language and sort of inferring the ability to enter into these waiver arrangements. And that is not what those regulations cover, and that is not what they were intended. We have to deal with the statutory limits on what we can do.

Senator SPECTER. Well, if you deal with the statutory language under 4047—and we will put this language as part of this record, together with the opinions of both sets of lawyers—if you take a look at this language, it has broad articulation of restoration, termination, and reinstitution.

I think what it really boils down to is your concession, Mr. Keightley, that the PBGC is not prohibited from doing—let me finish now—is not prohibited from doing what US Airways asks. And you come back to say that the PBGC is not specifically authorized to do what US Airways asks. But in the course of your many decisions, you do many things for which you cannot find a specific statutory authorization. But in the absence of a prohibition, you take a look at the purpose of the statute, of the broad discretion which

the Supreme Court said you had in LTV, and you exercise that discretion.

One final question, Mr. Kilberg. We are going to have to move on. We have quite a few others——

Mr. KEIGHTLEY. I would like to strike “the concession” on my part——

Senator SPECTER. Just a minute.

Mr. KEIGHTLEY [continuing]. Senator, any conceding——

Senator SPECTER. Just a minute.

Mr. KEIGHTLEY [continuing]. On my part.

Senator SPECTER. Just a minute, Mr. Keightley. We will give you a chance to make a concluding comment.

What is your evaluation of the last statement I just made, Mr. Kilberg?

Mr. KILBERG. Well, I—obviously, Senator, I am in agreement with you. We think the PBGC does have discretionary authority. As I said earlier, even if we are right, that does not mean that they have to exercise it in the way in which we would—we would ask them to exercise it. We happen to believe that US Airways’ situation is somewhat sui generis. That is to say, it is unique. We do not believe it would open floodgates for others to walk through or to flow through.

Senator SPECTER. Well, that is the follow-up question, whether—what do you make of Mr. Keightley’s articulation, Mr. Kandarian’s articulation, of the horrors which would follow if others use this as a precedent?

Mr. KILBERG. Well, we respectfully——

Senator SPECTER. Is there anything to that?

Mr. KILBERG [continuing]. We respectfully disagree.

Senator SPECTER. Okay, Mr. Keightley, if you have something to say, we will give you an opportunity to say it.

Mr. KEIGHTLEY. I would only like to say I continue to stick by my opinion and I do not view myself as having made any concessions in terms of what we are doing here. We lack the statutory authority to allow, as they have requested, a termination restoration to provide funding relief for US Airways’ pension plans.

Senator SPECTER. We are not saying you made any concessions. You have not made any concessions at all.

If you said that you were making this judgment as a matter of your discretion, or because you think it is a bad plan which is coming forward, we could see that. When you say that the statute prohibits it, we cannot see that.

Mr. KEIGHTLEY. Well——

Senator SPECTER. Do you want the last word, Mr. Keightley?

Mr. KEIGHTLEY. I just respectfully disagree with that.

Senator SPECTER. Oh, I understand that.

Next panel.

Thank you all very much.

**STATEMENT OF HON. JAMES C. RODDEY, CHIEF EXECUTIVE, ALLEGHENY COUNTY, PA**

Senator SPECTER. Our first witness is the chief executive of Allegheny County, Hon. James C. Roddey. Prior to becoming the chief executive of the second biggest county in Pennsylvania, in Pitts-

burgh, he had a distinguished career in business as chairman of Turner Communications Corporation, very active in civic affairs, a member of many boards including the Pittsburgh Regional Alliance, once named Pittsburgh Man of the Year, a graduate of Texas Christian University and a former captain of the U.S. Marines.

Mr. Roddey, we appreciate your being here. We thank you for all the work that you are doing on so many, many lines and following so closely all of the activities of US Airways, which is so important to your city, your county, your State, and your country.

The floor is yours, Mr. Roddey.

Mr. RODDEY. Thank you, Mr. Chairman and Senator Santorum. Good afternoon.

I shall practice my latest Beatitude, and that is: Blessed are those that are brief, for they shall be invited back.

I am pleased today to speak about the issue of US Airways. First, I want to publicly applaud the pilots, the machinists, the flight attendants, fleet service, simulator captains, dispatchers, reservation and gate attendant unions for agreeing to another \$82 million in concessions. All of these unions have played an instrumental role in assisting the airline with their financial situation.

US Airways continues to be a vital economic force in Allegheny County and Southwestern Pennsylvania. They generate approximately \$1.6 billion in economic impact in the Pittsburgh region and over \$2.3 billion to the Commonwealth of Pennsylvania.

I am here today to ensure that they remain a strong part of our community by requesting your support for immediate assistance to US Airways' bankruptcy plan. If the plan is to succeed, the Air Transportation Stabilization Board must approve the \$1 billion loan guarantee, labor give-backs must be realized, and pension-fund issues must be solved.

The Retirement System of Alabama, which will hold 36.6 percent of the stock of the post-bankruptcy carrier, must come through with the additional investments to which it has agreed. Allegheny County has led a regional effort, along with the State, to assist US Airways with a new maintenance training facility. We were out front in support of the United Airlines and US Airways merger.

I applaud the efforts made by Senators Specter and Santorum to permit US Airways to extend the \$3.1 billion in payments to its employees' pension plan over 30 years. This amount represents a gap over the next 7 years between what it will owe in pension benefits and how much US Airways' pension fund is expected to earn.

As you are aware, this legislation would have assisted US Airways tremendously and would have eliminated the need to pass the cost on to the Pension Benefit Guaranty Corporation. Unfortunately, last week, passage was prevented because of an objection by the Senate Finance Committee. Unless US Airways lowers its pension obligation over the next few years, its chances of obtaining the \$1 billion Federal loan guarantee and securing \$240 million in new equity financing from the Retirement System of Alabama is in serious jeopardy. Therefore, if the Retirement System should pull its financing or the Transportation Stabilization Board should reject the airline's loan application, US Airways would be forced to liquidate.

Unfortunately, without this legislation, US Airways is down to two options for dealing with the underfunded pension obligations. They can either go back to the employee unions and ask for further benefit cuts or terminate the pension plan, which would then be taken over by the Federal Pension Benefit Guaranty Corporation, or PBGC.

I urge the committee to work with the PBGC to resolve this problem. I cannot stress enough how important it is to Allegheny County and Southwestern Pennsylvania.

It is imperative that the U.S. Government participate in US Airways' reorganization to help ensure a financial turnaround. It is important that they sign off on final approval of the US Airways loan guarantee and urge the Pension Benefit Guaranty Corporation to work with US Airways and their unions to reach a solution to the pension issue. Failure to act on these matters now will only result in catastrophe if US Airways is forced to suspend operations and/or liquidate.

Please consider that US Airways is the main air connection for most of the East Coast, from Maine to Florida, and west to the Mississippi River, with no other airline in good enough financial condition to be able to step in and fill the gap in any reasonable time frame. This would have a negative effect to our national economy as well as a devastating impact in the Pennsylvania region—in the Pittsburgh region, Pennsylvania, and other regions and States served by US Airways. We have already lost 20 percent of the US Airways local workforce and 25 percent of our flights. And shareholders, of course, have lost everything. I urge the Federal Government to assist US Airways before any further loss to the Pittsburgh region and other regions throughout the United States occurs.

#### PREPARED STATEMENT

I understand that there is risk for the Federal Government. However, the loss of US Airways may facilitate even greater impact, a domino effect through the airline industry. Either the Federal Government takes a risk, a little risk now, to save the airline or face paying more later with a greater chance of significant negative consequences.

Mr. Chairman, I appreciate you allowing me to make this testimony.

[The statement follows:]

#### PREPARED STATEMENT OF JAMES C. RODDEY

Good Afternoon Honorable members of the Appropriations Sub-Committee on Labor, Health and Human Services, Education, and Related Agencies. I am pleased to speak before you today on the issue of US Airways.

First, I want to publicly applaud the machinists, flight attendants, reservation, and gate attendant unions for agreeing to another \$82 million in concessions. All of these unions have played an instrumental role in assisting the airline with their financial situation.

US Airways continues to be a vital presence to Allegheny County and Southwestern Pennsylvania. They generate close to \$1.6 billion in economic impact to the Pittsburgh region and over \$2.3 billion to the Commonwealth of Pennsylvania. I am here to ensure that they remain a strong part of our community by requesting your support for immediate assistance to US Airways bankruptcy plan. If the plan is to succeed, the Air Transportation Stabilization Board must approve a \$900 million

loan guarantee; labor givebacks and pension fund issues must be rationalized; and the Retirement System of Alabama (RSA), which will hold 36.6 percent of the stock in the post-bankruptcy carrier, must come through with the additional investments to which it has agreed.

Allegheny County has led the regional effort with the state to assist US Airways with a new maintenance and training facilities and was out front in support for the United Airlines/US Airways merger. Now, Allegheny County urges the Senate to support Senators Santorum and Specter's efforts to permit US Airways to stretch out \$3.1 billion in payments to its employee pension plan over 30 years. As you are aware, this legislation would assist US Airways tremendously in addition to the cost to the Pension Benefit Guaranty Corp. Specifically, this Bill would permit US Airways to stretch out its pension obligations from the current seven years to 30 years. The airline is estimated to have \$3.1 billion in under-funded pension obligations. This represents a gap over the next seven years between what it will owe in pension benefits and how much the US Airways pension fund is expected to earn.

Unless US Airways lowers its pension obligations by \$1 billion over the next few years, its chances of obtaining a \$900 million federal loan guarantee and securing \$240 million in new equity financing from the Retirement Systems of Alabama is in serious jeopardy. Furthermore, if the Alabama pension fund should pull its financing or the Federal Air Transportation Stabilization Board should reject the airline's loan application, US Airways could be forced to liquidate.

Unfortunately, without this legislation, US Airways will be down to two major options for dealing with the under-funded pension fund obligations. They can either go back to the employee unions and ask for further benefit cuts or terminate the pension plan, which would then be taken over by the federal Pension Benefit Guaranty Corp., or PBGC. In that case, pilots could face up to a 75 percent cut in their benefits.

I urge the committee to work with Senators Specter and Santorum to make this legislation work. I cannot stress enough how important it is to Allegheny County, Southwestern Pennsylvania.

It is imperative that the U.S. Government participate in US Airways reorganization to help ensure a fiscal turn-around. It is important that the Senate revisit the proposed merger with United Airlines, sign off on final approval of US Airways' loan guarantee, and urge the Pension Benefit Guaranty Corp. to allow US Airways to spread their pension liability out over the next few years. Failure to act on these matters now will only result in catastrophe if US Airways is forced to suspend operations and/or liquidate. Remember this it the main air connection for most of the East Coast from Maine to Florida and west to the Mississippi River with no other airline in good enough financial shape to be able to step in and fill the gap in any reasonable timeframe. This would continue to have a devastating effect to our national economy, as well as the tremendous negative impacts it would have in the Pittsburgh region, PA, and other regions and states served by US Airways. We have already lost 20 percent of the US Airways local workforce. There are 25 percent fewer flights and shareholders and local stakeholders have already lost everything.

I urge the Federal Government to assist US Airways before any further loss to the Pittsburgh region and other regions throughout the United States is affected. I understand that there is considerable risk for the federal government; however, the loss of US Airways may facilitate greater impact and a domino effect throughout the airline industry. Either the Federal Government pays a little now to save the airline or risk paying more later with a greater chance of significant and negative consequences.

Thank you for your time.

Senator SPECTER. Thank you very much, Mr. Roddey.

#### **STATEMENT OF DAVID N. SIEGEL, PRESIDENT AND CEO, US AIRWAYS**

Senator SPECTER. We turn now to Mr. David N. Siegel, president and chief executive officer of US Airways. Prior to joining US Airways, he was chairman and CEO of Avis Rent A Car System, president of Continental Express, received his bachelor of arts degree in applied mathematics and economics from Brown University and an M.B.A. from Harvard Business School.

Thank you for joining us, Mr. Siegel, and we look forward to your testimony.

Mr. SIEGEL. Thank you, Senator Specter and Senator Santorum and members of the subcommittee.

I am David Siegel, president and chief executive officer of US Airways. I appreciate the interest of the subcommittee in our company's restructuring efforts, and, in particular, the restructuring of our employee pension plans, which is the specific subject of today's hearing.

Since joining US Airways in March, the efforts of our new management team have been focused on executing a successful restructuring that would position our airline for short-term survival—

Senator SPECTER. Mr. Siegel, let me interrupt you just long enough to say that we will not be asking any questions which go to propriety interests or any confidential information of US Airways in this hearing.

Mr. SIEGEL. I appreciate that. That would position our airline for short-term survival and long-term success and profitability.

The cornerstone of the restructuring was the Federal guarantee of a \$1 billion loan from the Airline Transportation Stabilization Board, ATSB, created by Congress to respond to the industry's financial crisis following the September 11 attacks. As the subcommittee is aware, US Airways has been granted conditional approval of a loan guarantee whose funds will be made available after we emerge from Chapter 11.

The fact that we have \$1 billion in new capital available to us as exit financing has been invaluable in attracting Retirement Systems of Alabama as our new equity partner and achieving success with our major lenders, lessors, and financial partners. We have committed to a restructuring in which we would work closely with all of our labor groups to reach consensus on the cost savings and efficiencies that were necessary to make our company competitive in a fast-changing industry.

To that end, we have worked to complete a successful restructuring that will save as many jobs as possible, preserve as much pension and benefit compensation as possible in combination with competitive wages and competitive work rules, and, most importantly, create a vibrant and viable competitor on the east coast.

That commitment did not mean that this would be a painless process. In fact, we have negotiated two rounds of concessions, with nine different labor groups, over the past 8 months, an achievement most industry executives and analysts would have viewed as impossible 1 year ago. But as difficult as this process has been, our unions and our employees, to their credit, have stepped up and delivered when the company said the savings were necessary in order to save the company.

Of the remaining issues to be resolved is the approximately \$3.1 billion in pension obligations the company faces over the next 7 years as a result of the dramatic drop in both the stock market and the interest rates.

The majority of this obligation is related to the pension program for our pilots. In fact, we have committed to the unions representing our flight attendants and our mechanics that we can work out the funding issues for their respective members and will not consider any plan to terminate those pension programs. At this point, the pilot pension plan is the one at risk of being terminated.

To their credit, the Air Line Pilots Association has agreed to two rounds of significant changes to the pension plan which lowers the accrual rates, company contributions, and benefit payouts on a go-forward basis. In our initial restructuring agreement last summer, pay reductions up to 37 percent allowed us to reduce go-forward pension expenses by nearly \$600 million during the term of the ATSB loan. This, however, was not enough. So last month, we reached a second agreement with our ALPA group to further reduce labor costs and restructure our pilot pension program.

In spite of the substantial reduction in our go-forward pension costs, we must still face the problem of funding obligations of the current plan. Unfortunately for us, under ERISA, an employee cannot do anything about obligations that have already been accrued, and it is the 2004 and 2005 pension contributions that are the most troubling for the company.

The typical way an employer might deal with this problem is through a waiver request with the IRS which allows the company to postpone the pension-plan payment. In our case, such a tactic would only postpone the problem and do nothing to solve it. We therefore propose to the PBGC a restoration funding plan by which we would amortize and smooth out the \$3.1 billion, making \$300 million per year in contributions in each of the next 7 years and then a payment plan for the remaining \$1 billion.

Unfortunately, after several weeks of negotiations, the PBGC has concluded it does not have the legal authority to implement this alternative. Accepting our responsibility while being fair to our pilots is very important to us and was the basis for our proposal to the PBGC. To that end, I have personally met with members of the President's Cabinet and senior advisors at the White House on this very matter.

While I respect the PBGC's decision, I cannot say that I agree with it. But I have advised ALPA that, for the sake of our company's future, we must begin to consider the alternatives and work constructively with the PBGC on that effort.

Recognizing that our plan of reorganization and disclosure statement is hopefully to be approved by the bankruptcy court on January 16, the time we have to resolve this is very short. This date cannot be delayed and still allow us to emerge from bankruptcy by the end of March. This time line is set by requirements of our debtor-in-possession financing as well as our credit card processing agreements.

Last week, our pilots asked us to assist them in getting legislative relief to expand the authority of the PBGC. And as you know, Mr. Chairman, we willingly agreed to do so. You and other Republican Senators introduced S. 119 on January 9, and that very evening took it to the Senate floor and sought unanimous consent for its consideration. Although an objection was heard preventing further action on that measure, I want to applaud you and the other sponsors for taking such swift and positive steps to protect the pensions of our employees.

#### PREPARED STATEMENT

While the chairman and ranking member of the Senate Finance Committee agreed to hold a hearing before the end of January to

examine the funding problems U.S. industry has with its pensions, any protracted legislative process will simply be too late to accommodate the very tight timeline of our emergence plan. Our equity sponsor and DIP lender, the Retirement Systems of Alabama, as well as the ATSB, expect a resolution to this matter within days, not weeks or months.

Mr. Chairman, I appreciate your interest and support of our company's efforts to complete a successful restructuring.

[The statement follows:]

PREPARED STATEMENT OF DAVID N. SIEGEL

Chairman Specter and members of the subcommittee: I am David Siegel, president and chief executive officer of US Airways. I appreciate the interest of the subcommittee in our company's restructuring efforts, and in particular, the restructuring of our employee pension plans, which is the specific subject of today's hearing.

Since joining US Airways in March, the efforts of our new management team have been focused on executing a successful restructuring that would position our airline for short-term survival and long-term success and profitability. The cornerstone of the restructuring was the federal guarantee of a \$1 billion loan from the Air Transportation Stabilization Board (ATSB), created by Congress to respond to the industry's financial crisis following the September 11 attacks. As the subcommittee is aware, US Airways has been granted conditional approval of the loan guarantee, whose funds will be made available after we emerge from Chapter 11 protection this spring. But the fact that we have \$1 billion in new capital available to us as exit financing has been invaluable in attracting the Retirement Systems of Alabama as our new equity partner, and achieving success with our major lenders, lessors and financial partners.

We have committed to a restructuring in which we would work closely with all of our labor groups to reach consensus on the cost savings and efficiencies that were necessary to make our company competitive in a fast-changing industry. To that end, we have worked to complete a successful restructuring that will:

- Provide for long-term success
- Save as many jobs as possible
- Preserve as much pension and benefit compensation as possible, in combination with competitive wages.

That commitment did not mean that it would be a painless process. In fact, we have negotiated two rounds of concessions with nine different labor groups over the past eight months—an achievement most industry executives and analysts would have viewed as impossible a year ago. But as difficult as that process has been, our unions and our employees—to their credit—have stepped up and delivered when the company said the savings were necessary in order to save the airline.

One of the remaining issues to be resolved is the approximately \$3.1 billion in pension obligations the company faces over the next seven years, as the result of the dramatic drop in both the stock market and interest rates. The majority of this obligation is related to the pension program for our pilots. In fact, we have committed to the unions representing our flight attendants and mechanics that we can work out the funding issues for their respective members and will not consider any plan to terminate those pension programs. At this point, the pilot pension plan is the one at risk of being terminated.

To their credit, the Air Line Pilots Association has agreed to two rounds of significant changes to the pilots' pension plan, which lowers the accrual rates, company contributions, and benefit payouts on a go-forward basis. In our initial restructuring agreement last summer, pay reductions of up to 37 percent allowed us to reduce go-forward pension expenses by \$575 million during the term of the ATSB loan. This, however, was not enough. So, last month, we reached a second agreement with ALPA to further reduce labor costs and restructure the pilot pension program.

In spite of a substantial reduction in our go-forward pension costs, we still must face the problem of funding the obligations of the current plan. Unfortunately for us, under ERISA, an employer cannot do anything about obligations that have already been accrued, and it is the 2004 and 2005 pension contributions that are the most troubling for the company.

The typical way an employer might deal with this problem is through a waiver request to the Internal Revenue Service, which allows a company to postpone the pension plan payment. In our case, such a tactic would only postpone the problem



and do nothing to solve it. We therefore proposed to the Pension Benefit Guaranty Corporation (PBGC) a "restoration funding" plan, by which we would amortize and smooth out the \$3.1 billion—making a \$300 million contribution in each of the next seven years, and then a payment plan for the remaining \$1 billion. Unfortunately, after several weeks of negotiations, the PBGC has concluded that it does not have the legal authority to implement this alternative.

Accepting our responsibility while being fair to our pilots is very important to us, and was the basis for our proposal to the PBGC. To that end, I have personally met with members of the President's cabinet and senior advisers at the White House on this matter. While I respect the PBGC's decision, I cannot say that I agree with it. But I have advised ALPA that for the sake of our company's future, we must begin to consider the alternatives, and to work constructively with the PBGC on that effort.

Recognizing that our plan of reorganization and disclosure statement is hopefully to be approved by the Bankruptcy Court at a January 16 hearing, the time we have to resolve this is very short. This date cannot be delayed and still allow us to emerge from bankruptcy by the end of March. This timeline is set by requirements of our Debtor-in-Possession (DIP) financing and credit card processing agreements.

Last week our pilots asked us to assist them in gaining legislative relief to expand the authority of the PBGC and as you know, Mr. Chairman, we willingly agreed to do so. You and other Republican Senators introduced S. 119 on January 9 and that very evening took it to the Senate floor under the unanimous consent calendar. Although an objection was heard preventing passage of the measure, I want to applaud you and the other sponsors for taking such swift and positive steps to protect the pensions of our employees.

While the Chairman and Ranking Member of the Senate Finance Committee agreed to hold a hearing before the end of January to examine the funding problems U.S. industry has with its pensions, any protracted legislative process will simply be too late to accommodate the very tight timeline of our emergence plan. Our equity sponsor and DIP-lender—the Retirement Systems of Alabama—as well as the ATSB expect a resolution to this matter within days, not weeks or months.

Mr. Chairman, I appreciate your interest and support of our company's efforts to complete a successful restructuring.

Senator SPECTER. Thank you very much, Mr. Siegel.

**STATEMENT OF CAPTAIN DUANE E. WOERTH, PRESIDENT, AIR LINE PILOTS ASSOCIATION**

Senator SPECTER. We now turn to Captain Duane Woerth, a pilot with Northwest Airlines for 17 years and now president of the Air Line Pilots Association. For 5 years, he was a board member under Northwest employees stock ownership plan as a Boeing 747 captain. Captain Woerth served for 6 years in the U.S. Air Force, accumulated over 20 years of active and reserve duty, primarily with the Strategic Air Command, and is a graduate of the University of Nebraska and holds a master's degree from the University of Oklahoma.

What kind of schizophrenia does that give you on game day?

Captain WOERTH. As long as I have a red sweater on, I am okay.

Senator SPECTER. I went to the University of Oklahoma for a year, Captain Woerth, so I am a little distressed to say that you are from Nebraska, too.

Captain WOERTH. We tried to make it up to this year, Senator.

I am Duane Woerth, president of the Air Line Pilots Association, and we represent 66,000 airline pilots who fly for 42 airlines in the United States and Canada. And I am accompanied by Captain Bill Pollock, chairman of the US Airways Pilots in ALPA. And the US Airways pilot group in particular, appreciate the opportunity to present this statement in this very critical pension-plan funding situation that currently exists at US Airways.

I also want to express ALPA's strong support for S. 119 that you, Senator Specter and Senators Santorum, Warren, and Dole, intro-

duced last week that would provide a special funding rule for US Airways.

Now, ALPA firmly believes that passage of this bill is the only solution remaining to prevent termination of the pilots' defined benefit retirement plan. Without this relief, the plan will terminate and the pilots will lose significant retirement benefits. In addition, significant liabilities in the plan will be transferred to the Pension Benefit Guaranty Corporation. And last and most important, plan termination would also create new doubts and uncertainties surrounding the airline's effort to reorganize despite the enormous reductions in pay and benefits and employment that all of the unions at US Airways have reached voluntarily in negotiation with management.

Now, among these concessions, US Airways pilots have agreed to a 33 percent pay cut and significant reductions in their work rules, retirement plans, and other benefits, resulting in a savings of \$643 million per year. As a part of the restructuring, the US Airways pilots have also agreed to significant reductions in the accrual benefits under the retirement plan, which effectively freezes the plan for most pilots. This means that a significant percentage of pilots will not accrue any additional retirement benefits while they work for US Airways.

Now, in order to retain the loan guarantee from the ATSB and to emerge from bankruptcy, US Airways must restructure the pension contributions that would otherwise be required over the next 7 years under ERISA and the Internal Revenue Code. If it cannot do so, it will seek plan termination. The plan termination will result in pilots losing up to 75 percent of their anticipated retirement benefits because they exceed the PBGC guarantees.

Now, US Airways is facing estimated pension contributions of \$1 billion in 2004 and \$800 million in 2005 for its defined benefit plans. Now, the pilot pension obligation, alone, is estimated to be \$575 million in 2004 and \$333 million in 2005. Now, these large obligations did not result from the company's failure to fund the plan in accordance with the minimal legal requirements nor have these enormous obligations resulted from increases in retirement benefits. As I just mentioned, the pilots have agreed to substantial reductions in their benefit accruals. And the large pay cuts they have agreed to also reduce their benefits under the defined benefit plan.

Now, in 1999, the US Airways pilots'—or retirement plan had enough assets to cover approximately 97 percent of the pension benefit liabilities under the plan. And in 2000, the plan was more than fully funded, with assets covering 104 percent. That was just in 2000. But by 2002, however, the level of funded benefits dropped to 74 percent, and it is estimated—that is, as of January 1, 2003—the plan is only around 50 percent funded.

Because the benefit funding level is less than 80 percent, so-called deficit reduction funding laws kick in, requiring the company to make extraordinary additional pension contributions. The company cannot make these large pension payments, at least not on the schedule required by current law; hence, our efforts here.

US Airways is not alone in facing astronomical increases in pension contributions this year. In 1999 and 2000, defined benefit

plans sponsored by other airlines were also at or in excess of 100 percent funding. But by the end of 2002, they saw their funding levels drop significantly.

It is important to point out that all of these plans met the minimum funding requirements. In fact, many of these plans, including US Airways' pilot plans, had significant credit balances in their funding standards at the beginning of 2002. However, several factors—namely, low interest rates and abysmal market performance—have contributed to create pension funding crises in our country, as reported in *The New York Times* yesterday. Interest rates are at levels not seen since the 1960s, and stocks are experiencing their longest and deepest bear market since the Great Depression. Employers, and, in particular, airline carriers, are now required to contribute additional funding to pension plans when they cannot—when they can least afford to pay them.

There has been much discussion lately about whether traditional defined benefit plans are the best vehicles for American workers. Well, in a country where most workers' jobs change on a regular basis, airline employees are somewhat unique. For them, seniority, pensions, and other benefits are not portable, so they tend to work for the same employer for their entire career. And that makes traditional defined benefit plans the ideal mechanism for providing a major portion of these retirement benefits.

I would like to kind of cut to the chase and answer some of the questions that were raised in other testimony.

I really believe that what we are faced with right here was a perfect storm. US Airways got caught in a perfect storm. Who was going to predict the events of September 11? Who was going to predict that National Airport was going to get closed down, which drastically affected US Airways, infinitely more than any other airline. Those circumstances, combined with the economic conditions we just described—a stock market that has not been like this for decades and decades, interest rates that have not been this low for 40 years—these circumstances are not forever. And I think that is very important in the determination, certainly of the PBGC, but certainly, if they will not, of Congress.

It was described as a slippery slope. I see our industry, but this company in particular, at a temporary cliff that can be fixed. These are—the reversal of fortune is upon us, and it is in the hands of those assembled around here. If US Airways emerges from bankruptcy, there has never been a better reversal of fortune in the airline industry. This amount of concessions, a loan guarantee, this is a reversal of fortune people would dream about. So I am—really was lost in some of this debate why we cannot go forward here.

#### PREPARED STATEMENT

I want this airline to restructure. It has done everything it can, and I think the pilots deserve to have this pension plan preserved and restored. And I am certainly hopeful and very respectful of you, Senators Specter and Santorum, for willing to support this legislation.

[The statement follows:]

## PREPARED STATEMENT OF DUANE E. WOERTH

I am Captain Duane Woerth and I am President of the Air Line Pilots Association, International (ALPA) that represents 66,000 airline pilots who fly for 42 United States and Canadian airlines. I am accompanied by Captain Bill Pollock, Chairman of the US Airways Master Executive Council. ALPA, and the US Airways pilot group in particular, appreciate the opportunity to present this statement on the critical pension plan funding situation that currently exists at US Airways. I also want to express ALPA's strong support for S. 119 that you, Mr. Chairman, and Senators Santorum (R-PA), Warner (R-VA) and Dole (R-NC) introduced last week that would provide a special pension funding rule for US Airways. ALPA firmly believes that passage of this bill is the only solution remaining to prevent termination of the pilots' defined benefit retirement plan. Without this relief, the plan will terminate, and the pilots will lose significant retirement benefits. In addition, significant liabilities under the plan will be transferred to the Pension Benefit Guaranty Corporation (the "PBGC"). Plan termination would also create new doubts and uncertainty surrounding this airline's effort to reorganize, despite the enormous reductions in pay, benefits, and employment that all the unions at US Airways have reached voluntarily in negotiations with management.

## THE US AIRWAYS PENSION FUNDING PROBLEM

Having achieved unprecedented contract concessions by ALPA and the other labor groups, US Airways is in the final stage of obtaining approval of a \$1 billion seven year loan guarantee from the Air Transportation Stabilization Board ("ATSB") and approval of a plan of reorganization under which US Airways would emerge from Chapter 11 bankruptcy. A hearing on the adequacy of the disclosure statement accompanying the Company's plan of reorganization is scheduled for this Thursday. Further action by the ATSB is expected shortly.

As a result of the unions' concessions and management's efforts, US Airways is in a position to emerge from bankruptcy by the end of March 2003, following confirmation of its plan of reorganization, but only if the issue that brings us here today can be resolved. The US Airways pilots have agreed to a 33 percent pay cut and significant reductions in their work rules, retirement plan and other benefits, all of which save the Company \$643 million per year. These concessions actually have reduced the cost of employing a US Airways pilot by nearly 46 percent. Despite this, fourteen hundred US Airways pilots are out-of-work, with another 400 expected to be furloughed this year. This actually includes pilots who are far from being new hires, and who have up to 15 years of service with the Company.

As part of the restructuring, the US Airways pilots have also agreed to significant reductions in the accrual of benefits under the pilots' retirement plan, which effectively freezes the plan for most pilots. This means that a significant percentage of pilots will not accrue any additional retirement benefits while they continue to work for US Airways. The danger now is that even benefits that pilots have already earned over many years of service will be slashed dramatically due to a potential plan termination. A plan termination would result in pilots losing up to 75 percent of their anticipated retirement benefits, because they exceed the PBGC guarantees. We are here today asking your help to protect the US Airways pilots' retirement benefits that have already been earned.

In order to obtain the loan guarantee from the ATSB and to emerge from bankruptcy, US Airways must restructure the pension contributions that would otherwise be required over the next seven years under ERISA and the Internal Revenue Code. If it cannot do so, it will seek plan termination. US Airways sponsors defined benefit plans for its pilots, flight attendants, mechanics and other employees. The Company is facing estimated pension contributions of \$1.0 billion in 2004 and \$800 million in 2005 for its defined benefit plans. The pilot pension obligation alone is estimated to be \$575 million for 2004 and \$333 million for 2005. These large obligations did not result from the Company's failure to fund the plan in accordance with minimum legal requirements. Rather, the precipitous decline in the equity markets combined with the very low current interest rates have driven up the Company's funding obligations to unacceptable levels. Nor have these enormous obligations resulted from increases in retirement benefits. As stated, the pilots have agreed to substantial reductions in their benefit accruals, and the large pay cuts they have agreed to also reduce their benefits under the defined benefit plan. The Company can not make these large pension payments, at least not on the schedule required by current law. Additionally, the ATSB has advised the Company that it will not approve the loan guarantee if the Company cannot restructure these large pension funding obligations coming due over the seven year loan guarantee period. Without the loan guarantee, US Airways cannot continue to operate.

Present law contains two methods of allowing employers to restructure their pension obligations. However, neither of these methods will help US Airways. The traditional funding waiver permitted under the Internal Revenue Code and the Employee Retirement Income Security Act (ERISA) will not solve the pension funding problem for US Airways. The extension of the amortization period for certain unfunded liabilities permitted under the Internal Revenue Code and ERISA likewise will not help US Airways. Both the PBGC and the IRS have said that they do not have the authority to help US Airways in restructuring the pension obligation in a manner that would provide adequate relief short of plan termination.

In 1999, the US Airways pilots' retirement plan had enough assets to cover approximately 97 percent of the pension benefit liabilities under the plan. In 2000, the plan was more than fully funded, with assets covering 104 percent of benefit liabilities. By 2002, however, the level of funded benefits dropped to 74 percent and it is estimated that, as of January 1, 2003, the plan is only 50 percent funded. Because the benefit funding level is less than 80 percent, so-called "deficit reduction" funding laws kick in, requiring the Company to make extraordinary additional pension contributions.

US Airways is not alone in facing astronomical increases in pension contributions this year. In 1999 and 2000, the defined benefit plans sponsored by other airlines were also at or in excess of 100 percent funding, but by the end of 2002, saw their funding levels drop significantly. In one plan, for example, the funding level exceeded 140 percent in the year 2000, but is now less than 80 percent. It is important to point out that all of these plans, including the US Airways pilots plan, met the minimum funding requirements set forth in ERISA and Internal Revenue Code. In fact many of these plans, including the US Airways pilots plan, had significant credit balances in their funding standard accounts at the beginning of 2002. This is an indication that they had been funded in excess of the minimum funding requirements in prior years. However, current low interest rates and abysmal market performance have combined to create a pension funding crisis in our country, as reported in the lead story on the front page of the New York Times yesterday, January 13, 2003. Interest rates are at levels not seen since the 1960s, and stocks are experiencing their longest and deepest bear market since the Great Depression. Employers, and in particular airline carriers, are now required to contribute additional funding to pension plans when they can least afford to pay.

We are confident that Congress ultimately will enact long-term relief. However, U.S. Airways does not have time to wait for such long-term relief. Given the time constraints of the ATSB and the bankruptcy proceeding, the pension funding issue at US Airways must be resolved within a matter of a few weeks.

There has been much discussion lately about whether traditional defined benefit plans are the best retirement vehicles from many of America's workers. In a country where most workers change jobs on a regular basis, airline employees are somewhat unique. They tend to work for the same employer their entire careers, making traditional defined benefit plans the ideal mechanism for providing a major portion of their retirement benefits. While other workers need portability, most airline employees need a pension promise they can count on from their one and only employer.

#### ALPA'S RECOMMENDATIONS

ALPA strongly encourages the Senate to pass S. 119. Congress has historically recognized the unique circumstances of certain employers and has enacted special funding rules for certain employers and certain plans. This has been done in the past for LTV, for Greyhound and for TWA due to the unique circumstances involved in each case. We feel that US Airways is in a unique and deserving situation also. US Airways is the largest air carrier east of the Mississippi. It was significantly impacted by the events on 9/11 and the resulting extended closure of Reagan National Airport. US Airways has successfully positioned itself to emerge from bankruptcy within weeks. The ATSB is requiring US Airways to resolve its pension funding problem prior to loan approval, which would permit the Company to emerge from bankruptcy. Although other airlines face high pension contributions in the coming year or years, US Airways does not have enough time to wait for a long-term solution to this national crisis.

S. 119 would provide a special minimum pension funding rule for US Airways. Under S. 119, the US Airways defined benefit plans would be treated as if they had been terminated and then restored as of January 1, 2003, with the plans' unfunded accrued liability and unfunded current liability amortized over a 30-year period. The 30-year amortization period is the period currently allowed in the law for plans that are terminated and later restored to their sponsors. Such a 30-year amortization would permit the Company to, in effect, refinance, not eliminate, its funding obliga-

tions to the plans. This would allow US Airways to continue to maintain and fund a significantly less expensive retirement plan for its employees. Enactment of S. 119 would protect the retirement benefits of US Airways pilots, who would lose hundred of millions of dollars in pension benefits that are not guaranteed by the PBGC if the plan is terminated. It also protects the solvency of the PBGC by providing substantial funding for a plan that if terminated, would leave the PBGC with billions of dollars in liabilities that will not be recovered in bankruptcy. ALPA strongly urges the Senate to enact S. 119.

In conclusion, Mr. Chairman, I want to thank you for holding this hearing on this critical and current topic and for inviting me and Captain Pollock to present the views of ALPA and the US Airways MEC. We will be pleased to answer any questions that you or other members of the Subcommittee might have.

Senator SPECTER. Thank you very much, Captain Woerth.

**STATEMENT OF CAPTAIN BILL POLLOCK, CHAIRMAN, US AIRWAYS  
MASTER EXECUTIVE COUNCIL, AIR LINE PILOTS ASSOCIATION**

Senator SPECTER. Captain Bill Pollock is here, available for questions. A US Airways pilot, he serves as chairman of the US Airways Air Line Pilots Association Master Executive Council, a 17-year veteran of US Airways, holds a captain position on the A-320, and flew the P-3 Orion in the U.S. Navy, where he served for 21 years in combined active and reserve duty. He is a graduate of Norwich University.

Now, Captain Pollock, of course, we were together earlier today in Pittsburgh, and I think the subcommittee would benefit from hearing your testimony, so we will ask you to proceed.

Captain POLLOCK. Thank you, Senator.

I do believe that the US Airways pilots do deserve to have their day in court, and I am thankful for you and Senator Santorum for affording us this opportunity.

US Airways and its employees have been involved in major restructuring efforts to gain ATSB approval for a \$1 billion Federal loan guarantee. The company and its employees have participated in the US Airways restructuring plan to meet the conditions for cost savings and revenue enhancement. Now, through no fault of labor or the company, the ATSB loan is in jeopardy because of what I would call these out-of-the-ordinary Federal pension funding requirements.

The US Airways pilot pension plan is currently underfunded due to a combination of events—the effects of September 11, 2001, the general economy, and the aviation industry, in particular, as well as a decline in the stock market and 41-year-low interest rates. These actions and financial events have rapidly created a funding shortfall, and based on US Airways' estimate, it must pay over \$3.1 billion in retirement plans over the next 8 years, or over \$1 billion more than would be required if not for the precipitous decline in equity markets and interest rates.

US Airways is still working to emerge from reorganization, and requires the ATSB loan to provide necessary exit financing. US Airways states that it meets—if it meets its current pension funding obligations, then that very business plan submitted to the ATSB would no longer qualify US Airways for that loan.

The ATSB is requiring that the pension funding issue be resolved with the PBGC, which is taking the arguable position that we have discussed today, that it does not have the authority to help. The PBGC's mission statement says that it protects the retirement in-

comes of American workers' private defined pension benefit plans and encourages the continuation and maintenance of defined benefit pension plans.

To help US Airways obtain a 30-year deferred funding schedule from the PBGC, our pilots agreed to modify pension plan benefits, including reducing the maximum earnings benefit by 15 percent. Unfortunately, the PBGC refused US Airways' deferred restoration funding solution. And without the PBGC's authorization for restoration funding, US Airways employees, on top of tremendous job losses in pay and workrule concessions, could now be stripped of nearly all their pension benefit, the benefit they have spent decades working to earn and often the sole basis for their retirement.

In an industry that has weathered the worst of September 11's impact, US Airways was impacted the most. One of our domicile airports, Reagan National, was closed for a protracted period and only gradually reopened. US Airways suffered millions of dollars of lost revenue at that fiscally critical time. US Airways' restructuring has cost employees thousands of jobs, including the jobs of nearly 1,900 pilots.

US Airways was the first major airline to file for reorganization after September 11. US Airways employees have provided billions of dollars worth of concessions to win conditional approval for an ATSB loan that would be used upon emergence from reorganization. Recently, with the industry still depressed and the ATSB asking for further cost savings, US Airways employees authorized even more concessions.

US Airways employees have sacrificed a great deal to ensure that US Airways would survive and already participated in two rounds of concessionary negotiations. During these negotiations, the pilots provided the company with the bulk of the concessions that are needed to allow US Airways to receive approval of the ATSB loan.

Until our pension issue is solved, however, the ATSB will not provide the billion-dollar loan guarantee for which US Airways applied and already received unanimous conditional approval during the summer. Although our pension benefits are insured by the PBGC, that is little consolation to the pilots, many of whom have spent their entire flying career at US Airways. The PBGC can only pay a limited amount of monthly benefits to workers whose plans have been terminated.

Following the leadership of Captain Woerth, to my right, I would like to go right to the chase, as well, on a couple of points that were raised earlier. And if you would permit me, I would just—

Senator SPECTER. Proceed, Captain Pollock.

Captain POLLOCK [continuing]. Like the opportunity to jump right in.

Based on a previous speaker, who had recognized that the funding laws will need to be changed, I would observe that the funding laws have failed. And the very people that the PBGC was intended to protect, among the 4,300 pilots of US Airways, the horse has left the barn, and that failure, you know, could very well come home to roost with this pilot group with a failed pension plan.

Second, another speaker from a previous panel mentioned that short-term solutions were the fix to short-term problems. And I

would submit that this short-term problem of the funding of the pension plans in 2004 and 2005 is exclusively, or near exclusively, the result of conditions beyond the control of the company, Congress, or anyone else. It is a precipitous decline in equity markets, values, the asset base of the fund, and interest rates.

What is being contemplated here is a termination of a plan with permanent ramifications—more than long-term ramifications—permanent ramifications to the pilots that we represent for what, in all likelihood, is a short-term problem that will be corrected with an improvement in equity markets, interest rates, and the general economy.

Third, there was a question as to the integrity of the plan and the precedent-setting potential of some special dispensation. And the rhetorical question was raised, How do we differentiate? And I would suggest that differentiation could be done very much the same way the ATSB differentiates different companies or airlines that step before it to get a Federal guaranteed loan which assumes risk. That is what we are asking the PBGC to do, assume risk. That is what the ATSB has to do under their charge. And so, in much the same way the ATSB evaluates a business plan and determines whether it is worthy, the PBGC could differentiate between different corporations, as well. That is a thought.

Finally, I might have misunderstood the speaker, but early on in testimony, there was an assertion that if US Airways was to be allowed to defer payments, that there might be some competitive advantage to the company. To the contrary, if the plan was terminated, there would be a competitive advantage to the corporation because the funding requirement would be wiped out.

Now, as much as I want US Airways to be competitive and as much as we have contributed a great deal to that very end, I would like to see US Airways be left on the hook for our pensions, something that they have agreed to do and something that would provide the win-win-win solution that we had talked about earlier.

Thank you very much.

Senator SPECTER. Thank you, Captain Pollock.

Mr. Siegel, Senator Santorum and I intend to pursue this matter. We had made the unanimous consent request, as you noted, on Thursday, and it may be possible for us to bring this bill up under so-called rule XIV. And we will be consulting and considering the alternatives which we have. And we understand the tight timeline that you have.

If the PBGC adheres to its position, notwithstanding what I think is very positive testimony that they have the discretion to do differently, and we cannot get a legislative correction, does US Airways have any alternative but to terminate the pension plan?

Mr. SIEGEL. No, we do not. And let me just say that, again, it is the position of the company that the PBGC has the discretion to grant the relief that we are requesting. We also understand it is within their discretion not to do it. So we continue to have that difference.

It is still our preference to have the legislative solution to restoration funding, because, as I said earlier, the company is not trying to walk away from this obligation. We think that the taxpayers of this country win by not having to, either directly or indirectly,



fund that deficit through the PBGC. We think our employees win, because we can preserve our plan. And we think that our business plan enables us to, contrary to Mr. Kandarian's testimony, not have a solution—a situation where the hole gets bigger, but, in fact, closes the gap.

So I am in agreement with Captain Pollock's testimony, with the exception of—I do not think we are asking the PBGC to take on risk. I think our plan reduces the risk.

That said, if we cannot get legislative relief, we have to be able to demonstrate to the ATSB, in order to get the guarantee and emerge successfully from bankruptcy, that there is a funding solution to our pension, and so the company will have no alternative but to pursue a distress termination of the plan. We are proceeding on that basis as a backup, if you will, and working together with our ALPA pilot group and the PBGC on some kind of follow-on plan that is——

Senator SPECTER. On a distress termination plan, then, does US Airways have no further obligations to the pension plan?

Mr. SIEGEL. Not to that plan, no. PBGC——

Senator SPECTER. But to a new plan which may be instituted?

Mr. SIEGEL. Well, the company has, we believe, at least a moral obligation, if not a legal obligation, to our pilot group to make good on the substantially reduced pension benefits that they have agreed to that are unprecedented in our industry. And so we would seek to put in place a follow-on plan that was acceptable to both the IRS and PBGC that would certainly be within their guidelines and limits but also seek to provide a benefit to our pilot group. And we have to remember that——

Senator SPECTER. So that would call for a contribution from US Airways?

Mr. SIEGEL. Absolutely. We are absolutely committed to doing that.

Senator SPECTER. And what would the benefits then be to the pilots?

Mr. SIEGEL. Well, it is unclear. It depends on the plan that is accepted. We would—you have to remember that the—if you look at the pilot plan, it has been substantially reduced twice. When I mentioned that we had pay cuts up to 37 percent, our pilots, specifically in the first round, agreed to that kind of dramatic cut on the pay rate on which our pilot group retires.

Senator SPECTER. So you are saying that there would be a pension plan, but it would be a reduced plan, and you cannot say exactly now what it would be.

Mr. SIEGEL. We would seek to try and put in place a plan, when you took it—took the PBGC guarantee, in combination with the new follow-on plan, it would seek to replicate the economics, not of the original plan, not of the reduced plan after the first round of concessions, but the substantially, dramatically unprecedented new plan that our pilot group agreed to with us in the second round of negotiations.

Senator SPECTER. Well, are you saying, then, that the plan which was finally agreed to is something that you would duplicate by the PBGC's contributions and by the contributions which you would make to a new plan?

Mr. SIEGEL. The company could not guarantee that we could do that. We believe that we could come up with a plan that would substantially replicate the economics of that second round of concessions that we agreed to with our pilot group, when you take the follow-on plan, in combination with the PBGC guarantee. And we think that that would—that should be acceptable to the PBGC because it is substantially different from the original plan.

Senator SPECTER. Have you discussed that with the Pilots Association?

Mr. SIEGEL. We are in discussions with the pilots and the PBGC, and we are working on a joint solution to the problem.

Senator SPECTER. Captain Woerth or Captain Pollock, would you care to comment on the satisfactory or unsatisfactory nature of that proposal?

Captain WOERTH. When you are in active negotiations, you are trying to reach the answer. But I think we both have good-faith effort that we will do so, but we have to have—when we are asking for the legislative help here if we cannot get PBGC, we are not going to use the Nebraska term of “buying a pig in a poke.” We are going to—we want to negotiate this under collective bargaining, and we do not want to agree to a plan termination without knowing what a substitute is.

We are perfectly willing to bargain. We are very pragmatic about the situation at US Airways and want it to survive. What we are trying to do is negotiate up front, in the open, with good faith so nobody is—feels like they are being used or tricked here.

Senator SPECTER. Captain Pollock, do you have anything to add to that?

Captain POLLOCK. I would only add just this one thing. Any substitute plan will be inferior to the plan we have now.

Well, two things. The other thing is that, if I am not mistaken, the PBGC has oversight of the follow-on plan. So the panelist we heard from earlier may have sentiments about the nature of the follow-on plan that could very well conflict with what we think might be a adequate follow-on plan.

Senator SPECTER. Senator Santorum.

Senator SANTORUM. I am just trying to understand what looks to be—what is happening. Instead of the PBGC taking your plan, as you submitted it to them, and not incurring any cost as a result of that to the taxpayer, but potentially incurring some cost if there are problems down the road with funding your plan and there be a future termination.

In place of that—in place of that scenario, they have terminated—they are going to terminate the plan—the plan will be terminated. They will incur roughly a half billion dollars in current liabilities. There will be a follow-on plan that would be acceptable to the PBGC that they will incur some responsibility for if there is a problem with that plan in the future. Or will they not have that responsibility? Do you know the answer to that?

Mr. SIEGEL. Yes. The kind of plan that would be acceptable to the PBGC is likely to be a defined contribution plan.

Senator SANTORUM. So they would not have any liabilities—PBGC would not have any liabilities?

Mr. SIEGEL. Not with respect to the follow-on plan.

Senator SANTORUM. Not with respect to the follow-on plan. So they are basically taking it—just, again, sort of, looking at it, sort of, in a cold way, they are taking the one-time hit of a half billion dollars and, without any risk of any future liability, in place of taking what they would consider an unreasonable risk of future liabilities in the plan that you have submitted. That is the way they are seeing it.

Mr. SIEGEL. Right. In the restoration plan that we proposed, we believe that 50 percent over the 7-year period of underfunding—which, again, to Captain Woerth's point, was fully funded in 2000 before the stock market implosion and the change in interest rates—that 50 percent number would grow to 70 percent over the 7-year period. So we do not believe, as Mr. Kandarian testified, that the hole gets bigger. We think that the—we narrow the gap over the 7 years, which is one of many reasons we believe that, you know, it is a win-win.

Senator SANTORUM. Thank you, Mr. Chairman.

Senator SPECTER. Well, thank you very much, gentlemen. I think that this has been a very illuminating hearing. I believe that when you analyze all of the testimony which has been given here, it is plain that there is broad discretion in the PBGC, that essentially, when Mr. Keightley comes to the conclusion that there is no specific authorization and concedes or says that there is no prohibition, there is broad discretion as you read that statute, and they have chosen not to exercise that discretion. And the one Supreme Court decision supports the broad discretion which the corporation has. And that is the only deviation in the 20-some years that the PBGC has been in operation, so that what you really have here is bureaucratic intransigence. That is it, pure and simple.

There have been massive efforts made, really herculean efforts made, by the employees and by the company, by US Airways, to solve the problem, and you are continuing to work on it as best you can. And there are those of us in Congress—Senator Santorum and I have been in the lead on it, and others will be pursuing it, and we will explore other options to bring this testimony to the attention of our colleagues.

I think the testimony of Mr. Kilberg was very impressive, his background, and another prior counsel, Mr. Ford, General Counsel of the corporation. And we will proceed.

But we are determined to do our utmost to see to it that the employees of US Airways are treated fairly and that the pilots are treated fairly. And we applaud what you have done, Captain Woerth and Captain Pollock, and what you are trying to do, Mr. Siegel, and what Mr. Roddey is doing.

#### CONCLUSION OF HEARING

Thank you all very much for being here. That concludes our hearing.

[Whereupon, at 5:17 p.m., Tuesday, January 14, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]